

**AMENDED AND RESTATED SOLAR GENERATING FACILITY
LAND OPTION AND LEASE AND EASEMENT AGREEMENT**

This Amended and Restated Solar Generating Facility Land Option and Lease and Easement Agreement (the "**Agreement**") made and entered into July 13th, 2023 (the "**Execution Date**") and retroactively effective as of September 7, 2022 (the "**Effective Date**"), by and between **FRON Bn, LLC**, a Delaware Limited Liability Company ("**Lessee**"), and **George B Graves and Glenna J. Graves** (collectively, "**Landlord**"). Lessee and Landlord are at times collectively referred to hereinafter as the "**Parties**" or individually as a "**Party**."

RECITALS

A. Landlord and Lessee entered into that certain Solar Generating Facility Land Option and Lease and Easement Agreement dated as of September 7, 2022 (the "**Original Agreement**"). The Original Agreement was subsequently lost or destroyed and also contained certain minor formatting errors. The Parties mutually desire to amend and restate the Original Agreement to correct such errors and more fully memorialize their agreement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby amend, restate and replace the Original Agreement in its entirety with this Agreement effective retroactively to the Effective Date.

B. Landlord is the owner of that certain real property located in Washington County, Commonwealth of Kentucky, as more particularly described and depicted on **Exhibit A** attached hereto, which contains approximately 165.007 acres (the "**Property**"). Pursuant to the terms and conditions of this Agreement, Landlord desires to grant to Lessee, and Lessee desires to obtain from Landlord, an exclusive option to lease the Property other than the Do Not Disturb Area (as defined below). Pursuant to the terms of this Agreement, during the Option Period (as defined below), Lessee shall conduct a survey, at its sole cost and expense, to determine the precise location and acreage of the Property other than the Do Not Disturb Area that shall be used for the Generating Facility (the "**Site**").

C. Lessee desires to obtain from Landlord an exclusive option to lease the Site for purposes of building, owning, operating and maintaining a solar energy generating and storing facility (the "**Generating Facility**") on the Site, including, without limitation, solar panels, heliostats, energy storage equipment, energy storage facilities, batteries, charging and discharging equipment, substations, underground and/or overhead distribution, collection and transmission lines, underground and/or overhead control, communications and radio relay systems and telecommunications equipment, mounting substrates or supports, wiring and connections, cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors, power inverters, interconnection and/or switching facilities, circuit breakers, transformers, service equipment and associated structures, metering equipment, service roads, utility interconnections and any and all related or associated improvements, fixtures, facilities, appliances, machinery and equipment.

D. Landlord desires to grant Lessee an exclusive option to lease the Site for purposes of building, owning, operating and maintaining the Generating Facility thereon.

E. The Parties desire to agree upon the terms of such lease of the Site should Lessee exercise the Lease Option (as defined below).

F. The Parties are entering into this Agreement to memorialize their understanding regarding the foregoing.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Landlord hereby agree as follows:

1. Definitions.

(a) **“Affiliate”** means, when used with reference to a specified Person, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with the specified Person.

(b) **“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

(c) **“Do Not Disturb Area”** means the areas shown on **Exhibit A-1** that shall be excluded from the Site. These areas are reserved to Landlord’s use. Further, any portions of the property released by Lessee at any time during the lease term shall be added to the Do Not Disturb Area, not to be utilized by Lessee for any reason. As Lessee determines portions of the Property to be released, Lessee shall ensure that no acreage released is inaccessible to Landlord from the existing driveways/roadways or the County Road directly (i.e., no portions released by Lessee to be surrounded by Lessee’s Site without Landlord access). The parcel of approximately 2.003 acres acquired by Landlord at Deed Book 302, Page 163, being Tract 15 of the Booker Hills Subdivision is definitely going to be excluded from the Property acreage. Further, if Landlord’s cell tower area is under 0.5 acres, Tenant will include it in total acreage even though obviously no use can be made by Tenant or Landlord; however, any acreage of the cell phone tower greater than 0.5 acres shall be subtracted from the Property and excluded from this Lease.

(d) **“Energy”** means electric energy (alternating current, expressed in kilowatt-hours).

(e) **“Environmental Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, in existence and available as of the Effective Date together with those adopted, approved, enacted or issued by any Governmental Entity during the Term (as defined below), attributable to the generation from the Generating Facility, and its displacement of conventional Energy generation. Environmental Attributes include, but are not limited to (1) Renewable Energy Credits; (2) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; and (3) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere, irrespective of

whether such Environmental Attributes accrue for the benefit of Lessee, any Affiliate, or any investor of Lessee to any Affiliate. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Generating Facility, (ii) emission reduction credits encumbered or used by the Generating Facility for compliance with local, state, or federal operating and/or air quality permits, and (iii) Environmental Incentives.

(f) ***“Environmental Incentives”*** means any of the following, whether current and adopted or approved, enacted or issued by any Governmental Entity during the Term (as defined below): (i) investment tax credits attributable to the Generating Facility, any Generating Facility Asset or Energy output, (ii) production tax credits attributable to the Generating Facility, any Generating Facility Asset or Energy output, (iii) accelerated depreciation attributable to the Generating Facility, any Generating Facility Asset or Energy output, (iv) direct third-party rebates or subsidies for generation of energy by a renewable energy source, (v) fuel-related subsidies or “tipping fees” that may be paid to accept certain fuels, (vi) local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits and (vii) other financial incentives in the form of credits, tax write-offs, reductions, property tax abatements, property tax appraised value limitations, other property tax incentives, or allowances under applicable Law attributable to the Generating Facility, any Generating Facility Asset or Energy output, irrespective of whether such Environmental Incentives accrue for the benefit of Lessee, any Affiliate or any investor of Lessee or its Affiliate.

(g) ***“Environmental Laws”*** means all federal, state, local and regional laws, statutes, ordinances, orders, rules and regulations relating to the protection of human health or the environment including, without limitation, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., the Hazardous Materials Transportation Action, 49 U.S.C. Section 1804, et seq., the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, and any other applicable federal, state or local law now in force or hereafter enacted relating to waste disposal or environmental protection with respect to hazardous, toxic, or other substances generated, produced, leaked, released, spilled or disposed of at or from the Site, as any of the same may be amended or supplemented from time to time, and any regulation promulgated pursuant thereto.

(h) ***“Generating Facility Assets”*** means each and all of the assets of which the Generating Facility is comprised, including Lessee’s solar energy panels, mounting systems, carports, tracking devices, inverters, integrators, energy storage facilities, and other related equipment and components installed on the Site, electric lines and conduits, protective and associated equipment, improvements, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the Generating Facility.

(i) ***“Governmental Entity”*** means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, program administrator or other instrumentality of any government, whether federal, state or local, domestic or foreign, or any Person, owned, operated, managed or otherwise controlled thereby.

(j) **“Hazardous Materials”** means without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous substances, toxic substances, pollutants, contaminants, radon, asbestos, lead or lead based paint, oil and petroleum products and their by-products, polychlorinated biphenyls or related materials, and mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduce through the release of spores or the splitting of cells, as those terms may be used or defined in any Environmental Law.

(k) **“Law”** means any national, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to the Agreement or the transaction contemplated thereby.

(l) **“Lessee’s Financing Parties”** means any Persons, and their successors and assignees, providing funding in connection with any hedge provider, development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility.

(m) **“Mineral Holdouts”** means those areas and acres of the Property designated as such on **Exhibit B** attached hereto and such other areas as Landlord and Lessee may mutually agree from time to time.

(n) **“Minimum Acreage”** means 162.007 acres, which is the acreage upon which rent will be paid, regardless of the number of acres actually used or released by Lessee¹

(o) **“Person”** means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity, limited liability company, or any other entity of whatever nature.

(p) **“Renewable Energy Credits”** means certificates, green tags, or other transferable indicia indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to all of the Energy output during the Term (as defined below) created under a renewable energy, emission reduction, or other reporting program adopted by a governmental authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions); excluding, however, all Environmental Incentives.

2. Lease Option.

(a) **Option Grant.** For the non-refundable sum of [REDACTED] (the **“Execution Payment”**) previously paid and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, Landlord hereby grants

¹ The actual acreage will be determined once Tenant conducts its surveying; however, the parcel of approximately 2.003 acres acquired by Landlord at Deed Book 302, Page 163, being Tract 15 of the Booker Hills Subdivision is definitely going to be excluded from the Property acreage. Further, if Landlord’s cell tower area is under 0.5 acres, Tenant will include it in total acreage even though obviously no use can be made by Tenant or Landlord; however, any acreage of the cell phone tower greater than 0.5 acres shall be subtracted from the Property and excluded from this Lease.

Lessee the exclusive option ("**Lease Option**") to lease the Site (the "**Lease**") upon the terms and conditions set forth herein. Lessee shall have the right to exercise the Lease Option by notice in accordance with the terms of this Agreement ("**Exercise Notice**") at any time prior to the end of the Lease Option period (the "**Lease Option Termination Date**").

(i) **Title Commitment.** Lessee may obtain a current commitment by the Title Company to issue to Lessee a Leasehold Owner's Policy of Title Insurance (the "**Title Policy**") on the standard form in use in the Commonwealth of Kentucky, insuring good and indefeasible title to Lessee's rights in the Property, subject only to the Permitted Liens and the standard printed exceptions ("**Commitment for Title Insurance**") as set forth below, issued by insurance carrier(s) reasonably acceptable to Lessee. All costs, expenses and premiums and costs relating to the Title Policy shall be borne by Lessee. At any time at least 120 days before the end of the Option Period, Lessee may notify Landlord in writing of any easements, restrictions, liens, encumbrances and/or other title deficiencies other than Permitted Liens that are not acceptable in the sole and absolute discretion of Lessee ("**Title Deficiencies**"). Title Deficiencies shall be handled pursuant to Section 2(a)(iv)(F) below. "**Permitted Liens**" shall mean: (a) all easements and restrictions of record set forth in the Title Commitment to which Lessee does not object; (b) the lien for real estate taxes and statutory liens for taxes not yet due and payable; (c) public right of ways and legal highways, (d) zoning ordinances; (e) any mortgage existing as of the Execution Date (subject to the requirements below to obtain a SNDA); and (f) any other matters accepted by Buyer in accordance with Section 2(a)(iii)(F) below.

(ii) **Memorandum.** Lessee shall prepare and Landlord shall sign a notarized Memorandum of Land Option and Lease and Easement Agreement ("**Memorandum**") contemporaneously with the execution of this Agreement, and deliver the Memorandum to Lessee with the instruction to record the Memorandum with the County Clerk of the County where the Property is located contemporaneously with the Execution Date. The Memorandum shall include all material provisions of this Agreement required by applicable law, but shall not make any reference to specific amounts set forth in any payment provisions herein.

(iii) **Due Diligence.** During the Option Period, Lessee shall have the right to conduct due diligence review of the Property and related matters, including, without limitation the following:

- (A) On-site geological and environmental testing;
- (B) Determining the feasibility of obtaining the necessary land-use, grid interconnection and transmission permits for the Generating Facility;
- (C) Inspection of title to Property;

and Landlord shall:

(D) Within ten (10) days following the Execution Date, deliver to Lessee any of the following which Landlord has in its possession or over which it has reasonable control (but only to the extent not previously delivered to Lessee):

(i) Legible copies of the bills issued for the most recent tax year for all real estate taxes due on the Property;

(ii) All reports, studies, drawings, or analyses (collectively, "**Reports**") relating to the Property, including (without limitation), geotechnical, environmental, architectural, surveys and/or engineering Reports;

(iii) All title reports, title policies, deeds, leases, licenses, easements, and other agreements affecting the Property or any portion thereof; and

(iv) All notes, memoranda and written communications relating to the development of the Property, including (without limitation), negotiations with any governmental or quasi-governmental agencies; provided, however, Landlord shall have no duty to generate any of the items listed in (i) through (iv) of this Article 2(iv)(D) that do not already exist on the Execution Date.

(E) Upon notice (the "**Mineral Notice**") from Lessee of any such mineral interest disclosed by the Commitment for Title Insurance, Landlord shall use its best efforts, at its sole cost and expense, to (1) acquire any subsurface oil, gas and mineral interests (a "**Mineral Interest**") severed from Landlord's title to the Property or (2) obtain any surface waiver required by Lessee from the holder and/or operator of any Mineral Interest severed from Landlord's title to the Property, which shall be completed to Lessee's reasonable satisfaction (and pursuant to documents and agreements in form and substance reasonably acceptable to Lessee) as promptly as practicable after Lessee's delivery of the Mineral Notice. If Landlord is unable to complete the foregoing within 90 days after delivery of the Mineral Notice, Lessee, at its sole option, may elect to pursue such acquisitions or waivers at its own expense. If Lessee elects to pursue such acquisitions and waivers, Landlord, upon Lessee's request, agrees to take all actions reasonably necessary in connection therewith. Any oil and gas leases executed greater than five years prior to commencement of the Effective Date which have expired according to the terms of such leases by the prolonged cessation of operations or production shall be considered released upon the execution by Landlord of an Affidavit of Non-Production for the specified period.

(F) Landlord shall use its best efforts to eliminate any Title Deficiencies before the end of the Option Period. In the event that Landlord is unable to remove Title Deficiencies within such time period, Lessee may, at its sole option, extend the Option Period [REDACTED] to allow Landlord to continue its efforts to remove Title Deficiencies (unless a longer extension is mutually agreed upon in writing by the Parties). If at the end of the Option Period (as such may be extended) Landlord has been unable to remove all Title Deficiencies to Lessee's satisfaction, then Lessee shall have the right, in its sole discretion, to either exercise the Option (and accept the title with all uncured Title Deficiencies) or terminate this Agreement (which termination shall be Lessee's sole and exclusive remedy for Landlord's failure to cure any Title Deficiencies).

(G) Landlord shall use commercially reasonable efforts to support Lessee in conducting its due diligence, including without limitation, granting access to the Property, cooperating with zoning and conditional use permit queries and applications to the County in which the Property is located, and other similar activities of Lessee. [REDACTED]

[REDACTED] Lessee shall promptly restore any and all soil borings or other soil disturbance caused by Lessee during its performance of any testing during the Option Period as soon as reasonably practicable after the disturbance is generated to a condition reasonably similar to its original condition.

(H) Lessee shall not be permitted to commence construction of any Solar Generating Facility, or the components thereof, on any portion of the Property (other than meteorological and solar and radiation measurement, monitoring and recording equipment and facilities) unless and until Lessee has exercised the Option with respect to such portion of the Property. [REDACTED]

(G) Landlord reserves the right (i) during the Option Period to use the Site and conduct activities on the Site for any purpose (including farming, ranching, grazing, conservation, and hunting) other than oil, gas and other mineral exploration, development and operations, and further reserves the right to lease the Property and grant temporary licenses and easements and other rights on, over, under and across the Property to other persons, entities and governmental authorities provided any such lease shall be terminable upon Lessee's exercise of the Option. Landlord further reserves the right to the proceeds from any timber salvaged from the property by Lessee during site preparation.

(H) [REDACTED] Landlord will obtain at least one cost estimate for installation of a basis septic system servicing the tenant house located within the Do Not Disturb Area, all work performed thereunder to be intended to bring the residence in compliance with any applicable building or housing code as it related to wastewater/sewage removal. If Lessee agrees that the cost estimate is reasonable, then Lessee will contract for and pay for the cost of installation of the septic system. Landlord makes no warranty of the work of the entity performing the installation of the septic system, or the cost estimate obtained.

(iv) **Acreage.** The exact portion of the Property to be leased by Lessee for the Site shall be determined prior to the Lease Commencement Date (as hereinafter defined), based on the results of a survey to be obtained by Lessee during the Option Period. The Site shall include the total gross acreage of the Property less any acreage reserved to the Landlord and defined in the Do Not Disturb Area or acreage constituting restrictions or easements that restrict development and/or operation of the Generating Facility. For the purpose of calculating Option Payments, and only until such survey is completed, the number of acres of the Property on which Option Payments shall be made (the "**Option Payment Property**") shall be the greater of (a) Minimum Acreage or (b) those acres of the Property that fall within the County tax appraisal assessed acreage (or equivalent), less acreage constituting Mineral Holdouts and the Do Not Disturb Area. The Option Payment Property may be reduced by Lessee at any time, subject to the Minimum Acreage, during the Option Period (a) if Lessee determines in its sole discretion that less acreage is required for the Generating Facility or (b) based on the results of a survey, the elimination of any portion of the Property pursuant to Section 2(a)(vi) below, and/or any restrictions and/or easements that prevent

the development and/or operation of the Generating Facility. Once such survey is completed, the Option Payment Property and the property subject to the Lease Option shall be those acres of the Property constituting the Site, subject to the Minimum Acreage for purposes of Option Payment.

(v) **Subdivision.** Prior to the Lease Commencement Date, Lessee shall have the right to designate the boundaries and acreage it desires for the Site within the boundaries of the Property and based on Lessee's specifications. Lessee shall have the right, at its sole cost and expense, to seek all permissions and consents necessary to create the Site parcel by subdivision in compliance with the Law. Landlord agrees to cooperate with Lessee in this regard to the extent reasonably requested. [REDACTED]

(vi) **[Intentionally Omitted]**

(vii) **Subordination.** Landlord, at its sole cost and expense, no later than one hundred eighty (180) days after the Execution Date, shall use commercially reasonable efforts to obtain from the holder of any existing mortgage and other encumbrances identified by Lessee in writing (such holder, an "*Existing Lien Lender*") an agreement that so long as Lessee is not in default in the performance and observance of any covenant, condition, term or provision of this Agreement beyond any applicable grace or cure period, such Existing Lien Lender will not disturb Lessee's rights under this Agreement, which subordination and non-disturbance agreement (each an "*SNDA*") shall otherwise be in form and substance reasonably satisfactory to Lessee and Existing Lien Lender and shall be recorded in the real property records of the county in which the Site is located.

(viii) **Option Period.** The "*Option Period*" shall commence and did commence on the Effective Date and shall end [REDACTED]

(ix) **Entitlement Phase.** During the Option Period, Lessee may initiate the process of obtaining and negotiating, as applicable, the land-use and Generating Facility entitlements (e.g., conditional use permits, re-zoning, platting and/or subdivision of the Property, grid interconnection and transmission agreements, power purchase agreements, and the like) necessary to develop and operate the Generating Facility (the "*Minimum Entitlements*"). Landlord shall support Lessee in these efforts and hereby grants Lessee a power of attorney for the purpose of carrying out the entitlement activities described above. However, Lessee shall not change any attributes "running with the land" or otherwise encumbering the Property on a permanent basis, such as zoning, until after or concurrent with the Lease Commencement Date (as defined below) or earlier with the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. Lessee may enter into other agreements, such as (but not limited to) interconnection and transmission agreements, at Lessee's sole discretion; provided, however, that no such agreement shall constitute an encumbrance or lien on the Property as a matter of record, until after or concurrent with the Lease Commencement Date or earlier with the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. Lessee shall be solely responsible for all costs associated with its efforts to obtain the Minimum Entitlements, including but not limited to land-use permits, interconnection and

transmission applications and agreements, and shall hold Landlord harmless from, and shall reasonably indemnify Landlord for, such costs.

(x) If any Person holds a lien encumbering the Site ("**Lienholder**"), Lessee shall have the right to remove such lien pursuant to the terms of this subsection (x) in the event Landlord is in default under any applicable loan agreements, security agreements, or deeds of trust and any applicable cure period has lapsed. Pursuant to the terms of the SNDA, Lessee shall have the right, on Landlord's behalf, to cure Landlord's default, and any amounts paid by Lessee in connection therewith shall be credited against one or more Lease Option Payments or Annual Rent (as defined below) due hereunder.

(b) **Access during Lease Option Period.** As of the Effective Date, Landlord grants to Lessee a non-exclusive right to access the Site at any time while this Agreement is in effect in accordance with the terms and conditions hereinafter set forth ("**Access Right**") for purposes of conducting due diligence on the Site in conjunction with the development, design, planning and permitting of the Generating Facility. Landlord acknowledges and agrees that Lessee's due diligence activities may include, but not be limited to, soil, environmental, meteorological and geological testing. Lessee shall provide reasonable notice to Landlord in advance of Lessee's entry upon the Property for such due diligence activities in order to minimize disruption of Landlord's agricultural operations during the Option Period. Nothing in this Agreement shall grant Lessee any rights to any portion of the Property other than the Site or to any other property of Landlord.

(c) **Landlord's Documentation.** In addition to Landlord's disclosure obligations under this Section 2, Landlord agrees (i) to provide to Lessee reasonable opportunity to inspect and copy any and all additional relevant documentation related to the Property in Landlord's possession, unless Landlord is contractually bound not to disclose such documentation to third parties, and (ii) to cooperate with Lessee in Lessee's due diligence activities on the Property.

(d) **Prior Site Lease.** Landlord represents and warrants to Lessee that as of the Execution Date, neither the Property, nor any portion thereof, is subject to any lease or other occupancy or use agreement, except for those leases described on **Exhibit C** hereto. Landlord may lease the surface of the Property to third party farmers for the time period ending on the Lease Commencement Date (as defined below), provided, however, that such lease shall be terminable by Landlord upon sixty (60) days written notice.

(e) **Option Termination.** [REDACTED]

[REDACTED] Any Lease Option payments made by Lessee prior to such termination shall be non-refundable. Upon termination of the Lease Option by Lessee, the Parties shall have no further obligation under this Agreement; provided, however, that in the event of termination, Lessee agrees to promptly release or quitclaim all recorded notices and/or options to Landlord.

(f) **Option Payments.** In addition to the Execution Payment paid as a non-refundable independent consideration referenced in Section 2(a) above (subject to Section 2(a)(vii)), Lessee shall make Lease Option payments (each, a "**Lease Option Payment**") to Landlord for the Site as follows:

- (A) [REDACTED]
- (B) [REDACTED]
- (C) [REDACTED]
- (D) [REDACTED]
- (E) [REDACTED]

Each Lease Option Payment shall be paid in four equal quarterly payments. The first installment of the first Lease Option Payment shall be due and payable [REDACTED].

[REDACTED] If Lessee elects to terminate this Agreement, it shall have no obligation to make any Lease Option Payments relating to time periods after the Lease Commencement Date (as defined below) or the effective date of termination, as the case may be. Landlord hereby affirms that all Lease Option Payments due and payable under this Agreement prior to the Execution Date have been paid in full as of the Execution Date.

(g) **Untimely Payment of Lease Option Payments.** In the event Lessee makes any Lease Option Payment more than ten (10) days after the due date for such Lease Option Payment as set forth in subsection (f) above, then the amount of Lease Option Payment due to Landlord shall be increased, [REDACTED] on [REDACTED].

[REDACTED] In the event Lessee is [REDACTED] late with payment of the relevant Lease Option Payment, then such non-payment by Lessee shall constitute a default under the terms of this Agreement and Landlord may send a default notice (the "*Option Default Notice*") to Lessee [REDACTED].

[REDACTED] If Lessee fails to cure the default prior to the end of the [REDACTED] cure period, Landlord shall have the right to terminate this Agreement with such termination [REDACTED] following Landlord's notice of termination provided to Lessee, whereupon the Parties' obligations under this Agreement shall cease and Landlord shall have the right to pursue any payments accrued and owed by Lessee through such termination date.

3. **Lease.** As of the Lease Commencement Date (as defined below) and only subject to Lessee's exercise of the Lease Option in accordance with Section 2 above, Landlord hereby leases the Site to Lessee upon the terms and conditions stated hereinafter.

4. **Lease Term; Extension Options.** The initial lease term ("*Initial Term*") shall commence on the [REDACTED] ("*Lease Commencement Date*") and shall end on the [REDACTED] ("*Lease Expiration Date*"). Lessee shall have the right to extend the Initial Term [REDACTED] an "*Extension Term*," and, collectively with the Initial Term,

“Term”) by giving Landlord written notice of its intent to extend the Lease [REDACTED]

In the event Lessee elects to exercise its right to extend the lease beyond the Initial Term, the terms and conditions in effect during the Initial Term shall be applicable during each Extension Term.

(a) **Lessee’s Termination Right.** The Parties agree that Lessee may terminate this Agreement at any time (the “*Lessee’s Termination Right*”). In the event Lessee elects to exercise Lessee’s Termination Right, Lessee shall provide Landlord with at least one hundred twenty (120) days’ advanced written notice of its intent to terminate the Agreement (the “*Termination Notice*”) and of the date of such termination (“*Termination Date*”). Any and all Quarterly Rent (as defined below) paid by Lessee to Landlord prior to the date of Termination Notice shall remain the property of Landlord. Lessee shall pay Landlord all amounts accrued under this Agreement through the date of such termination. In no event shall Landlord have a right to seek damages against Lessee with respect to this Agreement solely by reason of its termination excepting only the amounts accrued through the date of such termination. In the event Lessee terminates this Agreement neither Landlord nor Lessee shall have any further rights, liabilities or obligations under this Agreement except for any of same that expressly survive termination of this Agreement. Within the ten (10) day period following the Termination Date, Lessee shall be obligated to file with the proper county recorder office notice of termination of this Agreement and shall remove all encumbrances recorded against the Site attributable to Lessee, including without limitation those encumbrances arising out of or related to Lessee’s acquisition, financing or construction of the Generating Facility or equipment related thereto.

(b) **Landlord’s Termination Right.** Except as qualified by Sections 20 and 21, Landlord shall have the right to terminate this Agreement only if (a) a failure by default in the performance of Lessee’s payment obligations under this Agreement shall have occurred and remains uncured after all applicable notice and cure periods, (b) Landlord simultaneously notifies Lessee, all Lessee Financial Parties, all Lenders, and all Assignees in writing of the default, which notice sets forth in detail the facts pertaining to the default, and (c) the default shall not have been remedied within thirty (30) days after Lessee receives the written notice, or, if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period of time, Lessee, has not begun to diligently undertake the cure within the relevant time period or to thereafter prosecute the cure to completion. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR ANY RIGHTS OR REMEDIES WHICH LANDLORD MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY, WITH RESPECT TO ANY NON-MONETARY DEFAULT UNDER THIS AGREEMENT THAT IS NOT REMEDIED WITHIN THE TIME PROVIDED IN THIS AGREEMENT,** [REDACTED]

5. Rent.

(a) **Rent.** The Parties agree that Lessee shall pay Landlord an annual rent for the Site in the amount of [REDACTED] for the duration of the

Term ("*Annual Rent*"). The Annual Rent shall be payable in quarterly installments (the "*Quarterly Rent*"), with the first partial or full payment due on the Lease Commencement Date

[REDACTED]

Any amount of Quarterly Rent paid to Landlord shall be non-refundable. Within five (5) days following the Lease Commencement Date, Landlord shall provide Lessee with Landlord's bank account information, including wiring instructions, enabling Lessee to make timely payments in accordance with the terms of this Agreement. Landlord shall provide Lessee with a prompt written notice (but in any event within three (3) Business Days) following any change in the bank account information that would prevent Lessee from making timely payments. In the event Landlord changes its bank account information and fails to provide Lessee with such new bank account information, then the deadline for any Lease Option Payment due and payable to Landlord shall be extended, without the application of Section 5(c) below, to ten (10) Business Days from the time Lessee is provided with the new bank account information. Any late lease payments shall be subject to the provisions of Section 5(c) below unless such delay in payment is caused by Landlord.

(b) **Construction Bonus.** Upon activation of Exercise Notice, Lessee shall pay to Landlord a onetime construction bonus payment [REDACTED].

(c) **Untimely Payment of Rent.** In the event Lessee makes any Quarterly Rent payment more than thirty (30) days after the due date for such Quarterly Rent payment, then the amount of Quarterly Rent payment due to Landlord shall be increased, [REDACTED].

[REDACTED]. In the event Lessee is more than thirty (30) calendar days late with payment of the relevant Quarterly Rent payment, then Landlord may send a default notice (the "*Default Notice*") to Lessee providing for a [REDACTED] curing period upon receipt of the Default Notice by Lessee (the "*Curing Period*"). If Lessee fails to cure the default prior to the expiration of the Curing Period, such non-payment by Lessee shall constitute a default under the terms of this Agreement and Landlord shall have the right to terminate this Agreement with such termination [REDACTED] following Landlord's notice of termination provided to Lessee.

6. Permitted Use

(a) During the Term, Lessee shall use the Site for the sole purpose of installation, construction, operation, maintenance, repair, improvement, replacement, and removal of the Generating Facility and uses incidental thereto (the "*Permitted Use*") and for no other business or purpose. The Permitted Use includes without limitation the following:

(i) the exclusive easement and right to, at any time during the Term, erect, construct, reconstruct, replace, relocate, remove, operate, maintain and use the following from time to time, on, under, over and across the Site, in connection with the Generating Facility, whether such Generating Facility is located on the Site or elsewhere on one or

more solar energy and battery energy storage projects (in such locations as Lessee shall determine from time to time in the exercise of its sole discretion after notice to Landlord): (a) a line or lines of towers, with such wires and cables as from time to time are suspended therefrom, above ground and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables; (b) facilities consisting of: (A) one or more substations for electrical collection, to step up the voltage, interconnect to transmission line or lines, and meter electricity, together with the right to perform all other ancillary activities normally associated with such a facility as may be necessary or appropriate to service Generating Facility, regardless where located, and (B) an operations and maintenance building, equipment and storage yard for purposes of performing operations and maintenance service on Generating Facility, regardless where located together with the right to perform all other ancillary activities normally associated with such an operation, including the installation of a well to provide water to such operations and maintenance building; and (c) with all necessary easements therefore;

(ii) an exclusive right to capture, use and convert the unobstructed solar resources over and across the Site; any obstruction to the receipt of and access to sunlight throughout the entire area of the Site is prohibited;

(iii) If any trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Site which might obstruct receipt of or access to sunlight throughout the Site or interfere with or endanger the Generating Facility or Lessee's operations, as determined by Lessee;

(b) Lessee shall provide notice that it requires Landlord to trim, cut down or remove any such obstruction. If Landlord does not trim, cut down and remove the obstruction within 10 days after delivery of such notice, Lessee shall have the right to enter Landlord's property and trim, cut down and remove such obstruction. Lessee shall have no right to transport, or caused to be transported, topsoil away from the Property, but such restriction shall not prohibit (i) Lessee from grading or other site work on the Site and (ii) removal of de minimis amounts of topsoil in connection with construction, site clean-up or decommissioning.

(c) Crops & Livestock. During the Lease Option Period, Landlord shall have the right to plant farm crops, commence or continue livestock operations, or enter into a lease for the planting of farm crops or the grazing/pasturing of livestock ("**Farm Lease**") on the Property. Any Farm Lease shall be in writing and shall contain a provision that allows the Farm Lease to be terminated by Landlord at any time, but still permits the farming party to complete its crop production cycle within the single crop year ending on October 31 of such year. Lessee shall have the right to give Landlord the Exercise Notice which notice shall be given pursuant to Section 2 [REDACTED] and following receipt of such notice Landlord shall not plant any crops, or purchase any additional livestock, or enter into any Farm Lease, and/or may be required to terminate any existing Farm Lease. [REDACTED]

[REDACTED]

(d) Lessee shall use minimally invasive construction methods, comply with all environmental and ecological governing authorities' regulations, and shall as soon as practicable after construction of the Generating Facility sow the soil under the Generating Facility in native grasses and pollinators, and shall comply with the following:

(i) During the period before the Lease Commencement Date, all waste, construction debris and excess materials generated by site preparation and construction activities will be disposed of in a timely manner in accordance with local, state and federal laws;

(ii) Lighting shall be limited to the minimum necessary for safe operation, and shall be directed downward, incorporate full cut-off features, and incorporate motion sensors where feasible;

(iii) At no point shall any portion of a solar panel exceed a height of 20 feet as measured from the highest natural grade below each solar panel; and

(iv) Shall not use invasive or nuisance species of plants.

(e) Lessee shall, at Lessee's expense, at all times promptly observe and comply in all material respects with all present and future laws, orders, regulations, rules, ordinances and requirements of federal, state, county and city governments with respect to the construction, operation and decommissioning of the Generating Facility.

7. Mineral and Water Rights

(a) **Ownership and Use by Landlord.** The Parties agree that Landlord shall retain all mineral rights (the "*Mineral Rights*") and water rights ("*Water Rights*") in connection with the Site as of the Effective Date, with the limitation during the Term that Landlord shall have the right to exercise such Mineral Rights and Water Rights only to the extent such exercise does not interfere with Lessee's Permitted Use. During the Term, Landlord shall have no right to enter the Site for exploitation of Mineral Rights or Water Rights, or both, without Lessee's prior written consent, which shall not be unreasonably withheld, provided that such exploitation does not interfere with operation and/or financing of the Generating Facility.

(b) **Use of Water by Lessee.** The Parties agree that the amount of water required by Lessee for operation of the Generating Facility is for cleaning and other maintenance purposes and to establish and/or maintain a dust mitigation cover crop. The Parties will act in good faith to quantify and accommodate Lessee's water requirements from the water district servicing the Property ("*Water District*") or from the Landowner if there is no Water District for the Site. Landlord will support Lessee with Lessee's water supply request.

(c) **Payment for Water.** Landlord shall be responsible for the payment of any applicable annual water availability fees to the Water District or any other Governmental Entity, including, without limitation, any assessment payable to the Water District; [REDACTED]

[REDACTED] Lessee shall be responsible for payment for water actually used by Lessee at the then-current payment rate promulgated by the Water District or Governmental Entity [REDACTED]

[REDACTED] Lessee may utilize water available from existing water wells on the Property. Lessee may also drill such new water wells on the Property as it concludes, in its sole discretion, are necessary for the Project Activities. All water well drilling activities and use must comply with applicable law and permitting requirements. Upon expiration or termination of this Agreement, Lessee shall not remove any water well then existing on the Property.

8. Zoning/Subdivision.

(a) Landlord shall (i) not attempt to alter the current zoning for the Site and (ii) contest any rezoning leading to the increase of the property taxes, unless otherwise requested by Lessee.

(b) In the event Lessee elects to re-zone the Site and notifies Landlord of its intent to change the then-current zoning for the Site (the "**Request for Assistance Notice**"), Landlord agrees to provide Lessee with all support as reasonably requested by Lessee so long as all costs and expenses are borne by Lessee. The Parties agree that all Lessee's requests for support in conjunction with the re-zoning of the Site for Lessee's Permitted Use shall be deemed reasonable. In the event Landlord elects not to assist Lessee as requested within a five (5) day period following the Request for Assistance Notice, Lessee shall have the right to perform any and all acts on behalf of Landlord that Landlord would be required to perform as if Landlord elected to act as requested in the Request for Assistance Notice. Notwithstanding the foregoing, Lessee shall have the right to rezone the Site as necessary or desirable for the Permitted Use; provided, however, Lessee agrees not to change the zoning designation applicable to the Site to any other designation (i) which would prevent future return to a zoning classification as agricultural after conclusion of the Permitted Use, or (ii) without Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord hereby authorizes Lessee to act as its agent and attorney-in-fact and perform any and all actions to effectuate the proper re-zoning of the Site for the Permitted Use. All costs and fees associated with such rezoning shall be borne by Lessee. Lessee agrees that if any of the Approvals sought by Lessee result in a zone change that would prevent future farming for any time period, Landlord may condition its approval of such zone change on Lessee's exercise of the Lease Option (i.e., such zone change shall not be effective until after Lessee exercises the Lease Option).

9. Sublease. Lessee may sublease all or any portion of the Site to any Person, *provided*, that any sub-tenant shall use the Site only for a Permitted Use in compliance with current zoning or, as applicable, with the then-current zoning change in accordance with Section 8(b) above. Lessee

shall remain primarily liable to Landlord for all its duties and obligations under this Agreement notwithstanding any sublease.

10. Taxes. Lessee shall pay all real property taxes [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Each Party shall notify the County Tax Assessor and Tax Collector of the proper address for its respective tax bill. Landlord shall submit the real property tax bill in writing to Lessee within five (5) days after Landlord receives the bill from the taxing authority. [REDACTED]

[REDACTED] Landlord shall pay its portion of the real property taxes, [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Lessee shall be responsible for all taxes directly relating to the Generating Facility. Lessee shall have the right, in its sole discretion and at its sole expense, to contest by appropriate legal proceedings (which may be brought in the name(s) of Landlord and/or Lessee where appropriate or required), the validity or amount of any assessments or taxes for which Lessee is responsible under this Agreement. Landlord shall in all respects cooperate with Lessee in any such contest.

11. Ownership of Generating Facility

(a) Landlord acknowledges and agrees that, notwithstanding that the Generating Facility or any Generating Facility Asset may be considered as a fixture on the Site, Lessee or its Affiliate, successor or assignee is the exclusive owner and operator of the Generating Facility, and Landlord may not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber (collectively, a "*Transfer*") the Generating Facility or any interest therein or the leasehold rights to the Site, whether with the fee interest or any other rights to the Site otherwise held by Landlord. Landlord shall give Lessee at least sixty (60) days' written notice prior to any transfer of all or a portion of the Site identifying the transferee, the portion of Site to be transferred and the proposed date of Transfer.

(b) Landlord agrees and acknowledges that the Generating Facility and all Generating Facility Assets are and shall remain the personal property of Lessee and Lessee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and/or attachments to real property under applicable Laws. Landlord shall have no ownership, lien, security or other interest in any part of the Generating Facility, the Generating Facility Assets, or any profits derived therefrom. Landlord hereby waives all rights, statutory or common law, or claims that it may have in the Generating Facility and the Generating Facility Assets, including, without limitation, any landlord's lien on any property of Lessee.

(c) Landlord acknowledges that Lessee or its Affiliate, successor or assignee is the exclusive owner of electricity (kWh) generated by or stored at/within the Generating Facility and exclusive owner of the Environmental Attributes, Environmental Incentives and Renewable Energy Credits of the Generating Facility.

12. Mechanic's Liens. In the event a mechanic's lien is filed against the Site for Work of Improvement being conducted by Lessee or on Lessee's behalf, Lessee shall use commercially reasonable efforts to resolve the associated claim within sixty (60) days of the filing thereof. In the event Lessee is unable to resolve such claim within the sixty (60) day period and elects to preserve its rights to contest the claim and the lien associated therewith, then Lessee may obtain a bond to cover the mechanic's lien in the event Lessee is unsuccessful in its contest and as a result is unable to satisfy its payment obligations to the respective contractor. In the event Lessee does not cause the mechanic's lien to be removed within sixty (60) following the filing thereof or does not obtain a bond within such sixty (60) day period, then Lessee shall be deemed in default under the terms of this Agreement following written notice from Landlord; following such written notice, Lessee shall have an additional thirty (30) days within which to cause such lien to be released or bonded around. Nothing in this paragraph or this Agreement shall be construed to prohibit Lessee from granting one or more liens on all or any portion of Lessee's right, title or interest under this Agreement as security for the repayment of any indebtedness and/or the performance of any obligation relating in whole or in part to any of the Generating Facility, the Generating Facility Assets, or related rights or property.

13. Landlord's Representations and Warranties; Covenants of Landlord. In order to induce Lessee to enter into this Agreement, Landlord covenants, represents and warrants, as of the Effective Date and throughout the term of this Agreement, as follows:

(a) There are no liens, mortgages or security interests on the Site, except Permitted Liens or as identified in the Commitment for Title Insurance for each applicable parcel.

(b) To Landlord's knowledge, there are no and have never been any Hazardous Materials on the Site.

(c) Landlord is the owner of fee simple title of the Site and has full authority to enter into, execute, deliver and perform this Agreement, and is not in default of any mortgage (or similar financing document affecting or potentially affecting the Site) affecting the Site.

(d) Landlord covenants that Landlord has lawful title to the Site and full right to enter into this Agreement and that Lessee shall have quiet and peaceful possession of the Site throughout the Term.

(e) Landlord has no actual or constructive notice of any condemnation or eminent domain proceedings or negotiations for the purchase of the Site or any part thereof in lieu of condemnation.

(f) To Landlord's knowledge, there are no unrecorded restrictions, easements, leases or agreements affecting the Site that, after the Lease Commencement Date, might prevent or adversely affect the use or occupancy of the Site by Lessee for operation of the Generating Facility.

(g) There are no circumstances known to Landlord or commitments to third parties that may damage, impair or otherwise adversely affect the Generating Facility or its construction, installation or function (including activities that may adversely affect the Generating Facility's exposure to sunlight).

(h) To Landlord's knowledge, there are no Hazardous Materials present at the Site and Landlord has no knowledge of any violation of Environmental Laws relating to the Site. There are no underground storage tanks located on the Site. Landlord has not manufactured, introduced, released or discharged from or onto the Site, the soil or the groundwater any Hazardous Materials nor permitted the same, and Landlord has not used or permitted the use of the Site or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials. Lessee acknowledges that the Site may have been used for agricultural purposes and may contain chemicals lawfully used for such agricultural purposes.

(i) There is no claim, litigation, proceeding or governmental investigation pending or threatened against or relating to Landlord or the Site which is in conflict with this Agreement or which could have a material adverse impact upon Lessee's Permitted Use.

(j) During the Term, Landlord shall remain current with respect to (i) the payment of all property taxes, fees and special assessments levied against the Property, and (ii) hazard and liability insurance coverage related to the Property, except as noted in Section 18(e) below.

(k) **Noninterference.** Landlord's activities and any grant of rights Landowner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with: the construction, installation, maintenance or operation of the Generating Facility, whether located on the Property or elsewhere; access over the Property to the Generating Facility; or the undertaking of any other activities permitted under this Agreement. Without limiting the generality of the foregoing, Landlord shall not interfere with solar resources, solar irradiation, direction of light, or sunlight over the Property by engaging in any activity on the Property or elsewhere that might cause a decrease in the output or efficiency of the Generating Facility. Lessee shall have the right to remove any obstructions to the light on the Property that materially and adversely affect its operations if this covenant is violated. Landlord further agrees to avoid any activities which would cause the introduction of continuous or commercially unreasonable amounts of dust onto the Generating Facility.

(l) **Confidentiality.** Landlord shall maintain in the strictest confidence, for the benefit of Lessee, all solar data, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Generating Facility, and the like, whether disclosed by Lessee, or discovered by Landlord, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landlord, or (ii) was already known to Landlord at the time of disclosure and which Landlord is free to use or disclose without breach of any obligation to any person or entity. Landlord shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee. Notwithstanding the foregoing, Landlord may disclose such information to Landlord's lenders, attorneys, accountants and other personal advisors; any prospective purchaser of the Property; or pursuant to lawful process, subpoena or court order; provided Landlord in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information.

(m) **Waivers.** Landlord waives any and all rights to seek enforcement of any setbacks and setback requirements, whether imposed by law or by any person or entity, including, without

limitation, any setback requirements described in the zoning ordinance of the county in which the Property or said land is located or in any governmental entitlement or permit heretofore or hereafter issued to Lessee, its permitted successor, assign or Affiliate ("**Setback Requirements**"). Landlord further waives any Setback Requirements which may apply to the installation of the Generating Facility on the Property. Further, if so requested by Lessee, its permitted successor, assign, or Affiliate, Landlord shall promptly, without demanding additional consideration therefore, execute, and if appropriate cause to be acknowledged and recorded, any setback waiver or other document or instrument required by any governmental authority and to generally cooperate with Lessee in obtaining any such waivers. Landlord acknowledges that certain aspects inherent to the operation of the solar energy facilities may result in some nuisance, such as visual impacts, possible increased noise levels, possible glare, and other possible effects of electrical generation and transmission including without limitation potential interference with radio, television, telephone, mobile telephone or other electronic devices. Without limiting the grant of easements made in this Agreement, Landlord understands and has been informed by Lessee that the Generating Facility on the Property may result in some nuisance, and hereby accepts such nuisance, and Landlord waives its right to object to such nuisance provided that Lessee complies with its obligations in this Agreement.

(n) **Road Use.** Landlord acknowledges Lessee shall be entitled to construct roads, culverts, bridges and related improvements on the Property, and to improve and upgrade any roads, culverts, bridges and related improvements from time to time existing on the Property. Lessee shall have the right to remove fences, gates, cattle guards and any other improvements on structures on the Property which interfere with Lessee's operations. In no event shall Lessee be responsible for any acts or omissions, any removal of fences, roads and other improvements, any damage to the Property, any improvements or other property placed thereon, or any nuisance caused by, any third person who is not a Lessee Party or is not otherwise acting on behalf of Lessee. In the event Lessee crosses or cuts an existing fence line, Lessee shall install a temporary brace during construction and as appropriate a fence corner, line brace, cattle guard, and/or gate thereafter which meets commercially reasonable industry standards. In the event that Lessee's access to the Property includes use of any portion of an existing roadway also used by Landlord, or a Landlord Party, Lessee shall make reasonable efforts to maintain the roadway so as to prevent excessive degradation of the roadway surface (i.e., excessive rutting or other pitting of the roadway, erosion of the underlying soil or accumulation of standing water may be caused) by Lessee, a Lessee Party or any third party acting on behalf of Lessee. Lessee does not plan to utilize the existing access road leading in to the farm's tenant house from the County Road and will instead separate the Do Not Disturb Area including the access road from the remainder of the property and Lessee shall have no use or access thereto.

(o) **Division into Separate Agreements.** Lessee may divide the Property into two (2) or more separate solar energy projects or phases of development if such division becomes necessary to further the development of the Generating Facility. If Lessee elects to divide the Property into two (2) or more solar energy projects or phases of development, then Landlord shall, within twenty (20) days after written request from Lessee, and without demanding any additional consideration, bifurcate this Agreement by entering into and delivering to Lessee new stand-alone Agreements (as many as are necessary for each division) (which shall supersede and replace this Agreement) that provide Lessee with separate option and leasehold estates in different portions of the Property, as designated by Lessee. Each of such new Agreements shall: (i) specify the

portion(s) of the Property to be covered thereby (and the term "Property", as used therein, shall refer only to such portion(s)); (ii) contain the same terms and conditions as this Agreement (except for any requirements that have been fulfilled by Lessee, any Assignee, or any other person or entity prior to the execution of such new Agreements, and except for any modifications that may be required to ensure that Lessee's and Landlord's respective combined obligations under such new options/leases do not exceed their respective obligations under this Agreement) and be in a form reasonably acceptable to Lessee and Landlord; (iii) be for a term equal to the then-remaining term of this Agreement; (iv) contain a grant of access, transmission, communications, utility and other easements for the benefit of the bifurcated option and leasehold estates, covering such portion or portions of the Property as Lessee may designate (but only to the extent permitted in this Agreement); (v) require payment to Landlord of only an acreage-proportionate part of the amounts hereof; and (vi) to the extent permitted by law, enjoy the same priority as this Agreement over any lien, encumbrance or other interest against the Property.

(p) **Assignments by Landlord.** The burdens of this Agreement and other rights contained in this Agreement shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Landlord and its successors and assigns. Landlord shall notify Lessee in writing of any sale, assignment or transfer of any of Landlord's interest in the Property, or any part thereof, sixty (60) days prior to any such sale, assignment, or transfer. Until such notice is received, Lessee shall have no duty to any successor owner, and Lessee shall not be in default under this Agreement if it continues to make all payments to the original Landlord before notice of sale, assignment or transfer is received.

14. Treatment of Liens; Third Party Rights.

(a) If at any time during the Term, any lien ("**Lien**") or any third party right ("**Third Party Right**") is found, exists or is claimed to exist against the Site or any portion thereof, that creates (or purportedly creates) rights superior to those of Lessee, and Lessee determines that the existence, use, operation, implementation or exercise of such Lien or such Third Party Right could reasonably be inconsistent with or delay, interfere with, impair or prevent the exercise of any of Lessee's rights under this Agreement or the financing of the Generating Facility, the Generating Facility Assets, or this Agreement, Lessee shall be entitled to obtain an SNDA from the holder of such Lien or such Third Party Right that is reasonably acceptable to all parties thereto, and Landlord shall use best efforts and diligence in helping Lessee obtain the same. Landlord agrees that any right, title or interest created by Landlord from and after the Effective Date in favor of or granted to any third party shall be subject and subordinate to (i) this Agreement and all of Lessee's rights, title and interests created in this Agreement, and (ii) any and all documents executed or to be executed by and between Lessee and Landlord in connection with this Agreement. Any such SNDA required by Lessee shall include an agreement between Lessee and the holder of a Lien or a Third Party Right that provides that the holder of such Lien or such Third Party Right (i) subordinates such Lien or such Third Party Right to Lessee's interest under this Agreement, (ii) agrees not to disturb Lessee's possession or rights under this Agreement, (iii) agrees to provide written notice of defaults under the Lien or Third Party Right documents to Lessee and agrees to allow Lessee, Lessee's Financing Parties and its Lenders a reasonable period of time following such written notice to cure such defaults on behalf of Landlord, and (iv) agrees to comply with such other requirements as may be reasonably required by Lessee or Lessee's Financing Parties or Lenders to ensure the interests of Lessee or such parties are not interfered with. All SNDAs

obtained by Landlord pursuant to this paragraph shall be in a form reasonably acceptable to Lessee and Lessee's Financing Parties and Lenders or other financial parties, if any, and shall be in a form that may be recorded following their execution. No Existing Lien Lender shall have any rights in or to Lessee's rights under this Agreement, the Generating Facility, the Generating Facility Assets or Lessee's moveable trade fixtures or other personal property of Lessee located in or on the Site.

(b) In the event Landlord's default under the terms of any Lien could lead to the foreclosure on the Site, Landlord agrees to provide Lessee with an immediate written notice of such Existing Lien Lender's oral or written intent to foreclose on the Site, allowing Lessee to cure Landlord's default if Landlord is unable or unwilling to do so. [REDACTED]

15. Condemnation.

(a) If all or part of the Site is proposed to be taken as a result of any action or proceeding in eminent domain, or is proposed to be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (collectively, a "**Taking**"), Landlord shall provide Lessee with reasonable advance written notice of any impending proceeding or meeting related to such Taking and shall not in the absence of Lessee settle with the Taking authority or agree on compensation for such Taking. The Agreement shall terminate as to any portion of the Site so condemned or taken (except in the case of a temporary Taking after the duration of which Lessee desires to continue the Agreement, and the Term shall be extended, in such event, by the duration of such temporary Taking). Subject to any applicable law or regulation, if any, any award or other compensation payable as a consequence of such Taking shall be paid as provided in subsection (b) below.

(b) Landlord and Lessee agree that (i) all condemnation awards payable in connection with the taking of all or any portion of the Site shall belong to Landlord, (ii) all condemnation awards payable in connection with the taking of the Agreement except Landlord's existing and future rights to rental income, the Generating Facility, or any Generating Facility Asset due to condemnation of the Site shall belong to Lessee, and (iii) Lessee shall have the right to file any separate claim available to Lessee related to the taking of the Agreement, the Generating Facility, or any Generating Facility Asset.

16. Quiet Enjoyment. Landlord covenants that Lessee shall peaceably and quietly have, hold and enjoy the Site during the Term and Landlord shall protect and defend the right, title and interest of Lessee hereunder from any other rights, interests, titles and claims arising through Landlord or otherwise.

17. Removal of the Generating Facility and Site Restoration.

(a) Upon expiration of the Term or the earlier termination of this Agreement, Lessee shall, after receipt of written notice from Landlord to Lessee to proceed, at Lessee's sole cost and expense, restore the Site within three (3) months after the expiration of the Term or the earlier termination of this Agreement to the same condition as it was on the Lease Commencement Date, excluding normal wear and tear (or deterioration due to non-usage of such items as drainage systems) as well as groundwater wells and Water Improvements and existing crops and vegetation,

by removing from the Site (i) the Generating Facility and any Generating Facility Assets including associated equipment or other personal property owned by Lessee, and (ii) all subterranean foundations, cables, conduits or similar equipment installed by Lessee ("*Restoration Obligation*"). If the Lessee's Restoration Obligation is not fully satisfied within three (3) months, Lessee shall pay Quarterly Rent to Landlord (as determined under Section 5) in advance for each subsequent 3-month period (or portion thereof) that the Lessee's Restoration Obligation remains unsatisfied. Landlord hereby grants to Lessee a license to enter upon the Site to perform Lessee's Restoration Obligation. All restoration work shall be done by a restoration contractor and based on a contract in form and substance as reasonably acceptable to Lessee that will require the contractor to perform all decommissioning activity (including driving of vehicles and pedestrian traffic) on the Site and nowhere else on the Property. Notwithstanding the foregoing, Lessee shall not be obligated to change the then-current zoning for the Site to the zoning in effect as of the Lease Commencement Date. Within ten (10) days of the Lease Commencement Date, Lessee shall obtain and deliver to Landlord a restoration bond, or similar financial assurance, in form and substance acceptable to Lessee and Landlord (the "*Restoration Bond*") securing performance of Lessee's obligation, whether upon expiration of the Term, exercise of a termination right granted hereunder or other termination of this Agreement, to remove the Generating Facility and all other improvements made to and located on the Site and to fully restore the Site pursuant to Lessee's Restoration Obligation. The amount of the Restoration Bond shall be calculated to cover the entire cost to decommission and restore the property [REDACTED]. Once in place, Lessee shall keep such Restoration Bond, or similar financial assurance, in force throughout the remainder of the Term of this Agreement. Beginning in the fifteenth (15th) year of the Term, no more than one time in any five (5) consecutive year period, Landlord may obtain an opinion by an independent third party consultant, appointed by Landlord at Lessee's sole cost and expense and reasonably acceptable to Lessee, of the adequacy of the Restoration Bond for the then estimated net removal costs and, after thirty (30) days' written notice to Lessee, the value of the Restoration Bond shall be increased [REDACTED] at Lessee's sole cost and expense, to reflect the then estimated net removal costs. Landlord shall be permitted to draw upon such Restoration Bond or other financial assurance in the event that Lessee fails to remove the Generating Facility and other improvements and restore the Site as required pursuant to the terms of this Agreement. In the event that security similar to the Restoration Bond is required by any governmental entity, such security shall be credited against the Restoration Bond.

(b) Lessee shall remove all Improvements and personal property made or placed thereon by Lessee pursuant to this Lease, cover up or fill all pit holes, trenches or other borings or excavations made by Lessee thereon, and otherwise leave the Property in a good, clean condition. Lessee shall restore the Land (and any other land of Landlord impacted by Lessee's use of the Property) to substantially its condition as of the Effective Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations to the Land or Property (including, without limitation, all fencing, roads, solar panels and mounting, rock or gravel, concrete pads, underground cables, and subsurface improvements (unless Landlord agrees in advance to the retention of same in writing) and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain); provided, however, that Lessee shall not be obligated to regrade the Land or any other property or replant any crops or plants. The

removal and restoration shall be completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Property.

(c) All waste and excess materials will be disposed of in accordance with applicable local, state and federal laws, and Lessee shall evaluate the ability to recycle or reuse components of the Generating Facility in connection with decommissioning. All areas on which Lessee removes access roads, Generating Facility Assets and parking areas that were installed by Lessee shall be tilled and leveled with adjacent land. Lessee shall use reasonable efforts to have the perimeter security fence removed near the end of the decommissioning process. Before commencing decommissioning, Lessee will post or otherwise provide contact information for those seeking information about the process.

18. Liability and Indemnity

(a) **Lessee Indemnity.** Lessee shall indemnify, defend and hold harmless Landlord, its trustees, heirs, beneficiaries, successors, agents and employees (the "**Landlord Indemnitees**") of and from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of Lessee, any utility company or Landlord, or other loss or damage incurred by Landlord, arising out of (i) negligence or willful misconduct of Lessee, its agents, officers, directors, employees or contractors; (ii) the construction, operation, or removal of the Generating Facility; or (c) the material breach by Lessee of any of its obligations under this Agreement; except to the extent such damages or claims are directly attributable to the actions or omissions of Landlord or any Landlord Indemnitee. The obligation to indemnify shall extend to and encompass all costs incurred by Landlord and any Landlord Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Notwithstanding the foregoing and in the event Lessee's obligation to indemnify arises pursuant to this Section 18(a), Lessee shall pay for the reasonable expenses of any legal counsel reasonably acceptable to Lessee and engaged by a Landlord Indemnitee to defend a Landlord Indemnitee in connection with an indemnified claim. Lessee's obligations pursuant to this Section 18(a) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Landlord, the Landlord Indemnitees, or their respective contractors, successors or assigns, or to the acts of third parties who are not Affiliates, agents, officers, directors, employees or contractors of the Lessee. Subject to this Section 18(a), Lessee shall pay any cost that may be incurred by Landlord or the Landlord Indemnitees in enforcing this indemnity, including reasonable attorney fees. The indemnity provided in this Section 18(a) shall be in addition to and not in derogation or substitution of any indemnity provided elsewhere in this Agreement and shall survive the termination or expiration of this Agreement for a period of one (1) year.

(b) **Landlord Indemnity.** Landlord shall indemnify, defend and hold harmless Lessee, its officers, agents and employees (the "**Lessee Indemnitees**") of and from any claim, demand, lawsuit or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of either Lessee or Landlord, or other loss or damage incurred by Lessee, arising out of: (i) negligence or willful misconduct of Landlord, its trustees, beneficiaries, successors, agents, employees or contractors; or (ii) the material breach by Landlord of any of its obligations under

this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by Lessee and any Lessee Indemnitees in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Landlord's obligations pursuant to this Section 18(b) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Lessee, the Lessee Indemnitees, or their respective contractors, successors or assigns, or the acts of third-parties who are not Affiliates, trustees, beneficiaries, successors, agents, employees or contractors of the Landlord. Landlord shall pay any cost that may be incurred by Lessee or the Lessee Indemnitees in enforcing this indemnity, including reasonable attorney fees. The indemnity provided in this Section 18(b) shall be in addition to and not in derogation or substitution of any indemnity provided elsewhere in this Agreement and shall survive the termination or expiration of this Agreement for a period of one (1) years.

(c) **No Consequential Damages.** Notwithstanding any provision in this Agreement to the contrary, neither Lessee nor Landlord shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out of this Agreement whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Agreement. The foregoing provision shall not prohibit Lessee or Landlord from seeking and obtaining general contract damages for a breach of this Agreement.

(d) **Specific Performance.** In addition to its other remedies set forth in this Agreement, if Landlord fails to perform its obligations hereunder, Lessee shall have the option to (i) waive such default in writing, or (ii) seek specific performance of Landlord's obligations under this Agreement.

(e) **Waiver of Remedies.** The express remedies and measures of damages provided for in this Agreement shall be the sole and exclusive remedies for a Party and all other remedies or damages at law or in equity are hereby waived.

(f) **Liability Insurance.** Throughout the Term and until Lessee's Restoration Obligation is fully satisfied, at Lessee's sole cost and expense, Lessee shall keep in force comprehensive broad form general liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy or condition of the Site, and any improvements thereon, providing protection of at least Two Million dollars (\$2,000,000) for bodily injury or death to any one person, at least One Million dollars (\$1,000,000) for any one accident or occurrence, and at least One Million dollars (\$1,000,000) for property damage. Landlord shall be named as an additional insured under the liability insurance described in this Section 18(f) and Lessee shall provide Landlord with written evidence of and endorsements regarding the required insurance in the form of appropriate insurance certificates specifying amounts of coverage and expiration dates of all policies in effect.

(g) **Recognition of Dangers.** **LANDLORD RECOGNIZES THE NEED TO EXERCISE EXTREME CAUTION WHEN IN CLOSE PROXIMITY TO ANY PORTION OF THE GENERATING FACILITY. LANDLORD AGREES TO EXERCISE CAUTION AT ALL TIMES AND TO ADVISE THE LANDLORD INDEMNITEES TO DO THE SAME. LANDLORD SHALL TAKE REASONABLE MEASURES TO AVOID ALL**

RISKS ASSOCIATED WITH ELECTROMAGNETIC FIELDS RESULTING FROM THE PRODUCTION AND TRANSMISSION OF ELECTRICITY.

19. Right of First Refusal. Subject and subordinate to the obligations of Landlord under any Permitted Lien, in the event of any offer acceptable to Landlord, or to Landlord's successor in interest, at any time during the Term, for the sale of the Site or any portion thereof (the "**Sale Offer**"), Landlord, prior to the acceptance thereof, shall, within five (5) calendar days of receipt of such Sale Offer, give Lessee, with respect to such Sale Offer, written notice thereof and a copy of said Sale Offer including the name and address of the proposed purchaser, and Lessee shall have the option and right of first refusal for thirty (30) days after receipt of such written notice within which to elect to purchase the Site on the terms of said Sale Offer. If Lessee shall elect to purchase the Site pursuant to the right of first refusal herein granted, it shall give notice of such election within such thirty (30) day period. Lessee's failure at any time to exercise its option under this Section 19 shall not affect this Agreement and the continuance of Lessee's rights and options under this and any other section hereof. Landlord reserves the right to transfer the property to any immediate family member of Landlord or any family trust or entity established by Landlord or Landlord's immediate family member(s) and Lessee agrees that its right of first refusal is inapplicable to any such transfer by Landlord.

20. Assignment

(a) Each Party (each, an "**Assignor**") shall have the absolute right to assign this Agreement, in whole or in part, or any of its rights, duties and/or obligations hereunder to (i) a purchaser of the Property (subject to the right of first refusal set forth in Section 19) or, in the case of Landlord, a family trust or any Affiliate of the Landlord or such beneficiaries (provided any such assignee of Landlord becomes the owner of the Property) or (ii) any third party in the case of Lessee (in either case, hereafter referred to as the "**Assignee**"), provided, that such Assignee assumes in writing all of Assignor's rights, duties and obligations hereunder ("**Assumption Agreement**"). Upon the assignment made in accordance with this Section 20, Assignor shall deliver to the other Party a written notice of such assignment within ten (10) Business Days of the effective date thereof, and such notice shall be accompanied by a fully executed copy of the Assumption Agreement. As of the assignment date, all references to "Lessee" or "Landlord" herein, as applicable, shall refer to the Assignee. For the avoidance of doubt, any assignment made to an Assignee in contravention to this Section 20 shall be deemed null and void and shall not relieve the Assignor of any of its duties or obligations hereunder. Notwithstanding the foregoing, Lessee shall have the right to collaterally assign this Agreement, the Generating Facility, and the Generating Facility Assets in accordance with Section 21 to any other party upon notice to, but without the requirement for obtaining the consent of, Landlord.

(b) With respect to an assignment pursuant to Section 20(a), Landlord acknowledges and agrees that, upon receipt of written direction by Lessee's Financing Parties or any other financing-transaction assignee of Lessee (collectively, "**Lender**"), and notwithstanding any instructions to the contrary from Lessee, Landlord will recognize Lender, or any third party to whom Lender has reassigned the rights of Lessee under this Agreement, as the proper and lawful grantee of the Agreement and as the proper and lawful successor to Lessee with respect to access to the Site and fully entitled to receive the rights and benefits of Lessee hereunder so long as Lender (or its assignee) performs the obligations of Lessee hereunder. Landlord shall be protected and

shall incur no liability in acting or proceeding in good faith upon any such foregoing written notice and direction by Lender which Landlord shall in good faith believe (i) to be genuine and (ii) a copy of which to have been delivered to Lessee's last known address for Notice. Landlord shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing notice and direction, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements. Landlord agrees to execute and deliver all documents required by Lender to evidence these rights of Lender described herein.

(c) In addition to the foregoing, Landlord agrees and consents as follows:

(i) Landlord agrees to notify Lender in writing, at the address to be designated by Lender, simultaneous to any written notice to Lessee by Landlord hereunder, of any act of default of Lessee under this Agreement of which Landlord has knowledge that would entitle Landlord to cancel, terminate, annul or modify the Agreement or dispossess or evict Lessee from the Site or otherwise proceed with enforcement remedies against Lessee, and Lender shall have the same amount of time as Lessee, but at least thirty (30) days with respect to any monetary default and at least sixty (60) days with respect to any non-monetary default, to cure any default by Lessee under the Agreement; provided that in no event shall Lender be obligated to cure any such default. Lender shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing such defaults. Landlord expressly consents to such substitution, agrees to accept such performance, and authorizes Lender (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Lessee hereunder. Landlord shall not, and shall have no right to, terminate this Agreement prior to expiration of the cure periods available to a Lender as set forth above.

(ii) Notwithstanding that the Generating Facility is present on the Site, and subject to the terms and conditions hereof, Landlord hereby waives, disclaims and releases any lien it may have in and to the personal property used by Lessee in the conduct of its business and which is or may from time to time hereafter be located at the Site.

(iii) Landlord consents and subordinates its interest to Lender's security interest in the Generating Facility and the Generating Facility Assets and waives all right of levy for rent and all claims and demands of every kind against the Generating Facility and the Generating Facility Assets, such waiver to continue so long as any sum remains owing from Lessee to the Lender. Landlord agrees that the Generating Facility and the Generating Facility Assets shall not be subject to distraint or execution by, or to any claim of, Landlord. Landlord hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent Lender from the Site for the purpose of inspecting the Generating Facilities.

(iv) Landlord hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent Lender from the Site for the purpose of inspecting the Generating Facility.

(v) Lender shall have the absolute right to do one, some or all of the following things: (A) assign its mortgage; (B) enforce its mortgage; (C) acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means) to the leasehold real estate interest created by the

Agreement (the "*Estate*"); (D) take possession of and operate the Estate or any portion thereof; (E) perform any obligations to be performed by Lessee under the Agreement; (F) assign or transfer the Agreement and the Estate to a third person after obtaining the same; (G) exercise any rights of Lessee under the Agreement; or (H) cause a receiver to be appointed to do any of the foregoing or any other things that Lender is entitled to do under this Section 20. Landlord's consent shall not be required for any of the foregoing, and upon acquisition of the Estate or the Agreement by Lender or any person who acquires the same from or on behalf of Lender, Landlord shall recognize Lender or such other person (as the case may be) as Lessee's proper successor, and the Agreement shall remain in full force and effect.

(vi) Lender shall not have any obligation under the Agreement prior to the time that it succeeds to absolute title to the Estate. Lender shall be liable to perform obligations under the Agreement only for and during the period of time that Lender directly holds such absolute title. Further, if Lender elects to (A) perform Lessee's obligations under the Agreement, (B) continue any operations on the Estate, (C) acquire any portion of Lessee's right, title, or interest in the Estate or in the Agreement or (D) enter into a new agreement, then Lender shall not have any personal liability to Landlord in connection therewith, and Landlord's sole recourse in the event of a default by Lender shall be to execute against Lender's interest in the Estate and the solar energy facility Lessee intends to build, own, operate and maintain thereon, or to collect Net Removal Costs from the Restoration Bond under Section 17 above. Moreover, any other Lender or other person that acquires the Agreement or the Estate pursuant to foreclosure or an assignment in lieu of foreclosure shall not be liable to perform any obligations hereunder to the extent the same are incurred or accrue after Lender or such other person no longer has ownership of the Estate.

(vii) There shall be no merger of the Agreement or the Estate with the fee estate in the Property by reason of the fact that the Agreement or the Estate or any interest in the Estate may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property, and all persons (including each Lender) having an interest in the Agreement or in the estate of Landlord and Lessee shall join in a written instrument effecting such merger and shall duly record the same.

(viii) With respect to the disposition of any condemnation award and/or casualty insurance proceeds allocable to the Estate, or the Generating Facility, said proceeds shall be governed by the terms of the documents evidencing the financing, as amended, modified, supplemented or amended and restated and in effect from time to time. The aforementioned documents shall have no effect on the distribution of funds related to the fee interest in the Property, which shall belong solely to the Landlord.

21. Financing; Classification of Generating Facility; Lender Protection.

(a) **Financing.** Lessee may pledge its interest in this Agreement, the Generating Facility, and the Generating Facility Assets as security for loans or financing against its property. Subject to Landlord's commitments under Section 20 and this Section 21, if Lessee's Lender(s) requests additional terms and conditions to those already provided in this Agreement, Landlord agrees to consider any such requests in good faith. Landlord acknowledges that Lessee will be financing the acquisition and installation of the Generating Facility with financing

accommodations from one or more financial institutions and that Lessee's obligations will be secured by, among other collateral, a pledge or collateral assignment of this Agreement and Lessee's rights to payment and a first security right in the Generating Facility.

(b) **Classification of Generating Facility as Personal Property Only.** Landlord acknowledges that it has been advised that part of the collateral securing financial accommodations of Lessee is the granting of a first priority security interest ("**Security Interest**") in the Generating Facility to Lender to be perfected by a filing under the Uniform Commercial Code (UCC) and to be documented in a recorded notice on title to the Site. Landlord agrees to such filings. These filings by Lessee or Lender may include:

(i) UCC filing of a Financing Statement (FORM UCC-1) which clearly covers the Generating Facility as personal property only and not as a fixture.

(ii) Real estate filing ("**Fixture Filing**") in the appropriate office for recording of real estate records of the jurisdiction of the Site; such filing shall not create any interest in or lien upon the real property underlying the Site or the interest of the Landlord.

(iii) Landlord will use commercially reasonable efforts to place its successors, assigns, and lienors on notice of the ownership of the Generating Facility by Lessee and/or its Lender(s), the existence of the security interest, and the fact that the Generating Facility is not part of the Site or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(c) **Lender Protection.** Landlord expressly agrees, for the benefit of each Lender, and provided such Lender has delivered written notice to Landlord specifying its address for notice purposes, as follows:

(i) If this Agreement terminates because of Lessee's default or if the interest of Lessee under this Agreement is foreclosed, or if the Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Landlord shall, upon written request from any Lender within ninety (90) days after such event, enter into a new lease agreement for the Site, on the following terms and conditions:

(A) The term of the new lease agreement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the Term of this Agreement, at the same fees and payments and subject to the same terms and conditions as set forth in this Agreement.

(B) The new lease agreement shall be executed within thirty (30) days after receipt by Landlord of written notice of the Lender's election to enter a new lease agreement, provided said Lender: (x) pays to Landlord all fees and payments and other monetary charges payable by Lessee under the terms of this Agreement up to the date of execution of the new lease agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed; (y) performs all other obligations of Lessee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (z) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee that are reasonably susceptible of being performed by the Lender and would have accrued under this Agreement up to the date of commencement of the new lease

agreement. Any new lease agreement granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrances or other interest created by Landlord.

(C) At the option of Lender, the new lease agreement may be executed by a designee of such Lender without the Lender assuming the burdens and obligations of the Lessee thereunder.

(D) If more than one Lender makes a written request for a new lease agreement pursuant hereto, the new lease agreement shall be delivered to the Lender requesting such new lease agreement whose mortgage is prior in lien, and the written request of any other Lender whose lien is subordinate shall be void and of no further force or effect.

(E) The provisions of this Section 21(c) shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Landlord, Lessee and Lender, and, from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new lease agreement, such Lender may use and enjoy the Site without hindrance by Landlord or any person claiming by, through or under Landlord, provided that all of the conditions for a new lease agreement as set forth herein are complied with.

(ii) Notwithstanding any provision of the Agreement to the contrary, the Parties agree that so long as (A) there exists a mortgage in favor of a Lender that secures unpaid indebtedness, (B) Landlord has been provided advance written notice of the mortgage to Lender, and (C) Lender has not defaulted on its obligations hereunder if Lender has succeeded to absolute title to the Estate, this Agreement shall not be modified or amended and Landlord shall not accept a surrender of the Site or any part thereof or a cancellation or release of this Agreement from Lessee prior to expiration of the Term without the prior written consent of Lender. This provision is for the express benefit of and shall be enforceable by Lender.

(iii) No payment made to Landlord by a Lender shall constitute an agreement that such payment was, in fact, due under the terms of the Agreement; and a Lender having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.

(iv) At Lessee's request, Landlord shall amend this Agreement to include any provision which may reasonably be requested by a proposed Lender; provided, however, that such amendment does not impair any of Landlord's rights under this Agreement or materially increase the burdens or obligations of Landlord hereunder. Upon request of any Lender, Landlord shall execute any additional instruments reasonably required to evidence such Lender's rights under this Agreement.

22. Further Assurances

(a) Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made

pursuant to this Section 22. Lessee shall be responsible for reasonable costs that Landlord incurs as a result of Landlord's obligations under this Section 22(a), and Landlord shall be responsible for reasonable costs that Lessee incurs as a result of Lessee's obligations under this Section 22(a). In conjunction with the execution of this Agreement, Landlord agrees to execute the Owner's Affidavit Regarding Land Entitlement as reasonably agreed to by the parties, or any other form that is reasonably required by County for non-landowners to proceed with the entitlement process.

(b) From time to time, upon written request by Lessee (or its Lenders or Lessee's Financial Parties), Landlord shall provide within seven (7) days thereafter (i) a lien waiver from any party purporting to have a lien, security interest or other encumbrance on the Site as a result of a contractual arrangement with Landlord under this Agreement, confirming that it has no interest in the Generating Facility, or (ii) an estoppel certificate attesting, to the knowledge of Landlord, to Lessee's compliance with the terms of this Agreement or detailing any known issues of noncompliance, and such other matters as Lessee may reasonably request. The failure of Landlord to deliver such statement within such time shall be conclusive evidence upon Landowner that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

(c) In the event Lessee or any Affiliate of Lessee requests from Landlord during the Option Period or Term the grant of an easement for grid interconnection purposes on the Site (that may be separate from the Lease) or on any other property owned by Landlord neighboring the Site, Landlord shall grant such easement to the requesting party upon terms and conditions reasonably acceptable to Landlord and at Lessee's sole cost and expense. Landlord shall use reasonable commercial efforts to support Lessee or its Affiliates in conjunction with any grid interconnection sought by Lessee or Lessee's Affiliates, and Landlord shall, at Lessee's sole cost and expense, including reasonable attorney's fees incurred by Landlord for review of the proposed documents to be executed by Landlord, execute such additional documents, instruments and assurances and take such additional actions as Lessee or its Affiliate deems reasonably necessary or desirable with respect to such grid interconnection.

23. Recording.

(a) **Memorandum of Agreement.** Landlord agrees to execute a Memorandum of this Agreement, in form and substance satisfactory to the Parties, which Lessee may record with the appropriate recording officer. The date set forth in the Memorandum of Agreement is for recording purposes only. Upon termination of this Agreement for any reason, Lessee shall promptly record with the County Clerk's Office a release acknowledging that the Memorandum is terminated and that Lessee has no further interest of any kind in and to the Site. A copy of the recorded release shall be provided to Landlord within ten (10) Business Days of termination of this Agreement.

(b) **Ancillary Documentation.** Landlord agrees to Lessee's making of any filings against the Site required by Lender or to record any easements or other rights granted under this Agreement.

(c) **Easements.** If there is an existing condition on the Property for which an easement has not been recorded (e.g., a county road, irrigation canal, power lines or similar rights), and a request to record such easement is made during the Term or the Option Period by any

Governmental Entity, Landlord agrees to cooperate with same and to record an easement (or, if requested, an irrevocable offer of dedication) consistent with the existing condition on the Property. Lessee will only make such recording after or concurrent with the Lease Commencement Date or earlier with prior written consent of Landlord. If such easement or dedication results in a loss of Site acreage, the Annual Rent shall be recalculated based on such reduced acreage, subject to the Minimum Acreage. Landlord shall notify Lessee of any such easement request and provide Lessee with a copy of the recorded easement.

24. Meteorological Station License.

(a) Effective as of the Effective Date, Landlord hereby grants to Lessee an exclusive license (the "*Station License*") over a portion of the Property as mutually agreed by the Parties (the "*Station Site*") for the purpose of installing, operating, maintaining, repairing and removing a meteorological station ("*Station*") thereon, coupled with a right of ingress and egress over the Property for the purpose of accessing the Station Site. The Lessee, together with its representatives, agents and contractors, shall have the right to access the Station Site twenty-four hours a day, seven days a week for the purpose of installing, operating, maintaining repairing and removing the Station. Reasonable notice to Landlord of Lessee's intended access, or schedule of accesses, to the Property shall be given in advance during the Option Period, if said Option is exercised. The Station License shall be irrevocable by Landlord during the period [REDACTED]

(b) The Station and all data generated by the Station are the property of the Lessee, and Landlord expressly disclaims any interest therein. Upon termination of this Agreement, the Lessee shall cause the Station to be removed from the Station Site and shall fill all holes caused by such removal within the three (3) month period provided for in Section 17 above, and Landlord hereby grants the Lessee and its agents and representatives a right of ingress and egress over the Property and the Station Site for the purpose of permitting the Lessee to complete the foregoing.

(c) The Lessee HEREBY (I) ASSUMES ALL RISKS AND (II) RELEASES AND DISCHARGES Landlord from any and all losses, claims, demands, costs and expenses arising out of or in any way related to any damage (including damage by theft or vandalism) to the Station. The Lessee acknowledges that Landlord has no responsibility to provide security (including lights or fencing) for the Station.

(d) The Lessee shall indemnify, defend and hold harmless the Landlord Indemnitees of and from any loss, damages, claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of the Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of the Lessee or its affiliates, any utility company or Landlord, or other loss or damage incurred by Landlord, arising out of or in any way related to the Station (including but not limited to its installation, maintenance or removal). The obligation to indemnify shall extend to and encompass all costs incurred by Landlord and any Landlord Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. The Lessee's obligations pursuant to this Agreement shall not extend to claims, demands, lawsuits or actions for liability attributable solely to the negligence or willful misconduct of Landlord, the

Landlord Indemnitees, or their respective contractors, successors or assigns. The Lessee shall pay any cost that may be incurred by Landlord or the Landlord Indemnitees in enforcing this Agreement, including reasonable attorney fees.

25. Dispute Resolution and Mediation

(a) The Parties, through their respective Chairman, CEO, President or other authorized representative, shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "*Dispute*") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

(b) If, after such negotiation in accordance with Section 25(a) above, the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, the Chairman, CEO, President or other authorized representative of each Party shall meet for at least three (3) hours with a mediator whom the Parties choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the mediation services of JAMS to appoint a mediator. The mediator's fee and expenses shall be paid one-half by each Party.

(c) In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to Sections 25(a) or 25(b), both Parties shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

(d) All mediations pursuant to Section 25(b) shall be held in Washington County Kentucky, or such place as is mutually acceptable to Lessee and Landlord. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky, excluding principles thereof governing conflicts of law. In the event of any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation, termination, breach, existence, scope, or validity thereof, the Dispute shall be resolved in Washington County, Kentucky only, without a jury as provided by Section 25(e), either by a bench trial, or if the Parties agree, by arbitration. Each of the Parties hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court and waives any objection which it may have to the laying of venue of any proceedings brought in any such courts; and any claim that such proceedings have been brought in an inconvenient forum. Each of the Parties agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon each of the Parties, and may be enforced in any other jurisdiction, by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

(e) WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING OR HEARING BROUGHT BY A PARTY HERETO OR ITS SUCCESSORS AND ASSIGNS ON ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES HERETO, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW,

STATUTE, OR REGULATION, EMERGENCY OR OTHERWISE, NOW OR HEREAFTER IN EFFECT.

26. Amendments. This Agreement may be amended only in writing signed by Lessee and Landlord or their respective successors in interest; provided, however, if Landlord has been notified that Lessee has assigned any of its rights, duties or obligations under this Agreement to a Lender, then the prior written consent of Lender is required as well.

27. Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this Section 27 by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile. A Party may change its address by providing notice of the same in accordance with the provisions of this Section 27.

If to Landlord:

George B. and Glenna J. Graves
209 Columbus Dr.
Springfield, KY 40069



If to Lessee:

BrightNight LLC
Atten: Legal
13123 E. Emerald Coast Pkwy, Suite B #158
Inlet Beach, FL 32461

With a copy to: Winstead PC
1415 Vantage Park Drive, Suite 450
Charlotte, NC 28203
Attention: Mark E. Carlson, Esq.
Email: mcarlson@winstead.com

28. Entire Agreement; Amendments. This Agreement (including the exhibits, schedules and any written supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Except as otherwise expressly provided in this Agreement, in order to be effective

any amendment, modification or change to this Agreement must be in writing and executed by both Parties.

29. Survival. Any provision(s) of this Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

30. Severability. If any part, term, or provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect or impair the validity, legality or enforceability of any other part, term or provision of this Agreement and shall not render this Agreement unenforceable or invalid as a whole. Rather the part of this Agreement that is found invalid or unenforceable will be amended, changed or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision, within the limits of applicable Law, and the remainder of this Agreement will remain in full force and effect.

31. Waiver. The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

32. Governing Law. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Kentucky.

33. Brokerage Commissions. Each Party warrants to the other that no person or entity has a right to claim a real estate commission, finder's fee or any other form of compensation with respect to the transaction contemplated by this Agreement (collectively, "*Real Estate Compensation*"). Each Party hereby agrees to indemnify, defend and hold harmless the other Party from and against claims for Real Estate Compensation asserted by any third party as a result of actions by the indemnifying Party claimed to give rise to brokerage commissions payable as a result of the execution of this Agreement, which indemnification shall survive the expiration or earlier termination of this Agreement.

34. No Election of Remedies. Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to such Party's other remedies under this Agreement or available at law or in equity.

35. No Recourse to Affiliates. This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

36. Relationships of Parties. The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose, unless expressly stated otherwise herein.

37. No Third Party Beneficiaries. Nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, except with respect to Lessee's Lender to the extent expressly provided herein.

38. Attorneys' Fees; Costs. In the event of any action, arbitration, claim, suit or proceeding between the Parties relating to this Agreement or the subject matter hereof, the prevailing Party will be entitled to recover its reasonable attorneys' fees and expenses and costs of such action, claim, suit or proceeding, in addition to any other relief granted or awarded. Lessee will pay all legal expenses including attorney's fees of \$3,500 incurred by Landlord for the review and negotiation of this Agreement within thirty (30) days following execution of this Agreement. Lessee will pay reasonable attorney's fees incurred by Landlord not to exceed \$1,000 for each request to review of any phasing or bifurcation documents, subordination or other additional legal documents proposed by Lessee for Landlord's signature after the Effective Date and related specifically to Landlord's duties under this Agreement. Except as set forth herein, each party shall be responsible for its own attorneys' fees and other expenses.

39. Days. If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the jurisdiction in which the action is required to be performed or in which is located the intended recipient of such notice, consent or other communication, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first Business Day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references herein to a "day" or "days" shall refer to calendar days and not Business Days.

40. Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Agreement received by either Party by facsimile transmission, e-mail or electronic signature/electronic execution is binding upon the other Party as an original and shall have the full force and effect of an original signature.

41. General Interpretation. The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument of any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under this Agreement. No rule of strict construction will be applied against any Person.

42. Vegetative Screening and Fencing. To the extent Lessee places above ground Solar Facilities on the Property, Lessee agrees to plant trees along project areas that are visible from private drives and lines of sight accessible via private property and Lessee will coordinate with Lessor to ensure sufficient coverage specifically in the northernmost area of the Property.. Lessee shall plant trees of a species of the Lessee's choice, but which will be of the evergreen variety. At planting, such trees will be a minimum of 4' tall and 6' apart.

43. Environmental Clean-up. In the event that a notice is received from a governmental authority having jurisdiction over environmental clean-up of the Property as a result, whether directly or indirectly, of Lessee's or Lessee's employees, agents, contractors or affiliates actions

EXECUTION COPY

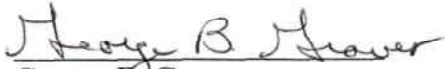
on the Property either during the Term, any renewal or extension thereof, decommissioning or the restoration period, Lessee shall indemnify and hold Landlord harmless against any and all such notices, orders, expenses or costs incurred as a result thereof; this provision shall survive the termination of this Agreement and restoration period.


[Signature page to follow]

EXECUTION COPY

IN WITNESS WHEREOF, the parties have executed this Solar Generating Facility Land Option and Lease and Easement Agreement, affecting the Property, on the day and year first above written.

LANDLORD:


George B. Graves


Glenna J. Graves

LESSEE:

FRON Bn LLC
a Delaware Limited Liability Company

By: 
Name: Martin Hermann
Title: Manager

By: _____
Name: Ron Kiecana
Title: Chief Development Officer

**Exhibit A
Property**

Description of Property

Parcel #	County	Legal Description	Acreage
13-010	Washington	See attached "Exhibit A continued" for further description of property.	165.007
TOTAL PROPERTY:			165.007
EXCEPTED PROPERTY:			3
TOTAL LEASED:			162.007

Washington County, Kentucky

County Parcel Number 13-010 (Partial)

A certain tract or parcel of land together with the improvements thereon, situated about 3 miles South of Springfield on a private road near Booker-St. Mary Road, and on the waters of Cartwright Creek, and more particularly described as follows: Beginning on the west bank of Cartwright's Creek corner to Baron Mattingly; thence up the creek, with Mattingly's line crossing same south 8 degrees east 44.8 poles to a twin sycamore stump corner to same; thence leaving the creek with Mattingly's line as follows: south 71½ degree east 7.2 poles to a turn in stone wall, south 69½ degrees east 6.16 poles to a post, south 28½ degrees east 20.2 poles to a walnut stump, south 5 degrees east 9.16 poles to end of rock fence corner to Moraja; thence with his line north 68 degrees east 16.8 poles south 69 degrees east 17 poles north 88½ degrees east 102 poles north 79 degrees east 34.6 poles a corner to J. K. Wall; thence with his line north 2 degrees east 38 poles corner to A. Willett; thence with his line south 88 degrees west 72 poles north 7 degrees east 60.72 poles corner to J. and H. Smith; thence with their line south 81½ degrees west 104 poles, south 8½ degrees east 6.52 poles, south 88½ degrees west 52.32 poles to the Beginning containing 93.44 acres, more or less.

Being the real estate conveyed to George Benny Graves and Glenna Jean Graves, husband and wife by Deed Book 140, Page 121, filed in the Register of Deeds Office of Washington County, KY.

ALSO, A CERTAIN TRACT OR PARCEL OF LAND situated about 2 ½ miles South from Springfield on the Springfield and St. Mary's Road, and described as follows: BEING TRACT #4 - BEGINNING at a stone, corner to J. K. Wall and Tract No. 3 and running thence S 89 ½ W 19.2 poles to a fence post, corner to J. R. Smith in Carrico's line: thence with fence S 5 W 46 poles to fence post, and S 7 W 36.4 poles to fence post, corner to Cambron, thence with fence N 89 E 74.76 poles to an ash tree in Wall's line, and thence with said Wall's line N 1/2 W 32.2 poles to a stone, thence N 8 W 4 poles to a stone, thence N 53 W 36 poles to a stone, and N 35 W 30 poles to the beginning, containing 27 ¾ acres.

EXECUTION COPY

ALSO, TWO TRACTS OF LAND situated on the Springfield and St. Mary's Turnpike about 3½ miles Southwest of Springfield, Kentucky, and described as follows:

TRACT NO. 1 - BEGINNING at a fence post in Carrico's line corner (1) to Willett thence with Carrico's line S 89½ W 68.3 poles to a stone corner (2) to Carrico's land, thence N 85 W 43.7 poles to a stone in O'Bryan's heirs line corner (3) to J. Rich Smith's 11 acres tract bought of Cambron, thence with line of 11 acre tract S 9 E 41.3 poles to corner (4) to Cambron on line of said 11 acre tract, thence N 81 E 106 poles to a stake in line of Willett corner (5) to Cambron, thence N 5 E 19.2 poles to the beginning, containing twenty two and one half acres (22½).

TRACT NO. 3 - A CERTAIN TRACT OF LAND situated in Washington County, Kentucky, on the waters of Cartwright Creek and bounded as follows: BEGINNING at (1) a stone on South bank of said creek corner to J. Rich Smith, thence up the side of said creek S 14 E 34.6 poles to a point in center of said creek corner (2) to J. Rich Smith and Mattingly, thence up the center of said creek S 5 E 4 poles to a point in said creek corner (3) to Mattingly and Cambron, thence N 89 E 50 poles to a stone corner (4) to Cambron; thence N 9 W 10.7 poles to corner (5) Cambron and Joseph Herman Smith's 22½ acre tract, same course continued 41.3 poles, making whole line 52 poles to corner (5) to J. Rich Smith in O'Bryan's line, thence N 85 W 13.8 poles to a fence post corner (6) to O'Bryan and J. E. Smith, thence S 74 W 42 poles to the beginning, containing eleven acres by survey made by F. R. Neale Nov 25, 1919.

Being the real estate conveyed to George Benny Graves and Glenna Jean Graves by Deed Book 239, Page 688, filed in the Register of Deeds Office of Washington County, KY.

ALSO, A certain tract of land located near Springfield in Washington County, Kentucky, and being more particularly described as follows: Being Tract #3 as described in the plat of Booker Heights Subdivision of record Plat Cabinet A, Slide 292 in the Office of The Washington County Clerk, said Tract #3 containing 39.67 acres.

Being the real estate conveyed to George Graves and Glenna Graves, his wife by Deed Book 286, Page 318, filed in the Register of Deeds Office of Washington County, KY.

THE FOLLOWING DESCRIBED TRACT OF LAND IS A PART OF COUNTY PARCEL NUMBER 13-010 BUT IS HEREIN EXCEPTED: A certain tract of land located in Springfield in Washington County, Kentucky, and being more particularly described as follows: Being Lot #15, Phase I, Block "C" of the Booker Hills Subdivision, containing 2.003 acres, as recorded in Plat Cabinet A, Slide 220, in the Washington County Court Clerk's Office.

Being the real estate conveyed to George B. Graves and Glenna J. Graves, his wife by Deed Book 302, Page 163, filed in the Register of Deeds Office of Washington County, KY.

LESS AND EXCEPT the following tract of land:

Located at the end of Columbus Lane-Agricultural Road From DB 286 PG 318 and as Shown in PC-A, Slot 292 Washington County, Kentucky, All reference to rebar (found) are ½ "X18" rebar capped PLS #3066

Tract #3-3 - Remaining Ag Tract

Beginning at rebar (found) and Southeast corner to Nance Addition Tract #3-1 (DB 282 PG 220) and northeast corner to George Graves 09.08 ACRE Addition Tract #3-3. Thence leaving Graves and with Nance to rebar (found), N 11 18' 01" E 162.00 feet; N 14 05' 06" E 96.35 feet; N 17 42' 04" E 105.45 feet; N 23 52' 12" E 99.97 feet; N 02 33' 10" E 33.50 feet; N 34 20' 43" W 31.55 feet; N 54 41' 34" W 37.12 feet to rebar (found) at Columbus Lane-Ag Road tum-a-round. Thence with curve to the left having Delta Angle of 100 33' 38"; radius of 50 feet; cord bearing N 55 17' 07" W 76.92 feet and an arc distance of 87.70 feet to rebar (found). Thence continuing with Ag road, N 05 16' 11" W 49.92 feet to corner of Nance Tract #2 (PC-A, Slot 246). Thence leaving Nance and crossing Columbus Ag Road, N 84 54' 11" E 50.06 feet to rebar (found) and corner to WESCO Properties Tract #1 (PC-A, Slot 246). Thence leaving Ag Road and with WESCO, S 76 31' 42" E 877.57 feet crossing Servant Run Creek to rebar (found) in fenceline of Dalmon Pinkston (DB 100 PG 539). Thence leaving WESCO and with Pinkston as fenced on the east side of creek, S 09 35' 54" E 531.63 feet to rebar (found) at post; S 71 20' 02" E 349.07 feet to rebar (found) at crooked Cherry and corner to Campbell (DB 171 PG 055). Thence leaving Pinkston and with Campbell as fenced S 42 56' 10" W 77.81 feet crossing Servant Run to rebar (found) at post; S 37 50' 12" W 653.66 feet to stone (found) and corner to Wesley Smith (DB 313 PG 608). Thence leaving Campbell and with Smith as fenced, N 83 17' 04" W 1022.70 feet to rebar (found) and corner to 09.08 Acre Graves Addition Tract #3-2. Thence leaving Smith and with Tract #3-2, N 11 16' 47" E 684.20 feet to the beginning. Containing 30.59 ACRES. The above described Tracts #3-2 and #3-3 are by survey of Reed Spaulding PLS #3066 as performed 3/10/10 and as shown on plat by same dated 3/11/10.

The above described Tract #3-3 is subject to r/w easement in favor of George and Glenna Graves Farm. Said easement is 50 feet in width at all points and east of and parallel to the east side lines of Tract #301 and Tract #3-2 as it leads from the end of Columbus Ag Road to the intersection of Wesley and Abigail Smith Farm (DB 313 PG608).

LESS, EXCEPT AND EXCLUDING that portion depicted herein by Landlord containing 1 acre, more or less. No legal description exists at present date for said Landlord 1 acre exclusion; however, said Landlord exclusion will be surveyed at a later date per the rights granted within this agreement.

Containing 162.077 acres, more or less after said Landlord exclusion.

**Exhibit A-1
Do Not Disturb Area**



Exhibit B
Mineral Holdouts

[To be updated and/or attached]

**Exhibit C
Leases**

[To be updated and/or attached]

SOLAR GENERATING FACILITY
LAND OPTION AND LEASE AND EASEMENT AGREEMENT

This Solar Generating Facility Land Option and Lease and Easement Agreement (the "**Agreement**") made and entered into as of the 25th day of August, 2022 (the "**Effective Date**"), by and between **FRON Bn, LLC**, a Delaware Limited Liability Company ("**Lessee**"), and **Jonathon M. Hagan** and **Sabrina A. Hagan**, his wife, ("**Landlord**"). Lessee and Landlord are at times collectively referred to hereinafter as the "**Parties**" or individually as a "**Party**."

RECITALS

A. Landlord is the owner of that certain real property located in Washington County, Commonwealth of Kentucky, as more particularly described and depicted on **Exhibit A** attached hereto, which contains approximately 46.99 acres (the "**Property**"). The Property is more particularly described in Deed Book 352 Page 106 and in Deed Book 352 Page 111 in the Office of the Washington County Clerk. Pursuant to the terms and conditions of this Agreement, Landlord desires to grant to Lessee, and Lessee desires to obtain from Landlord, an exclusive option to lease the Property other than the Do Not Disturb Area (as defined below) which is excepted from this option, lease, and easement agreement. Pursuant to the terms of this Agreement, during the Option Period (as defined below), Lessee shall conduct a survey, at its sole cost and expense, to determine the precise location and acreage of the portion of the Property (the "**Leased Portion**") other than the Do Not Disturb Area that shall be used for the Generating Facility (the "**Site**").

B. Lessee desires to obtain from Landlord an exclusive option to lease the Site for purposes of building, owning, operating and maintaining a solar energy generating and storing facility (the "**Generating Facility**") on the Site, including, without limitation, solar panels, heliostats, energy storage equipment, energy storage facilities, batteries, charging and discharging equipment, substations, underground and/or overhead distribution, collection and transmission lines, underground and/or overhead control, communications and radio relay systems and telecommunications equipment, mounting substrates or supports, wiring and connections, cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors, power inverters, interconnection and/or switching facilities, circuit breakers, transformers, service equipment and associated structures, metering equipment, service roads, utility interconnections and any and all related or associated improvements, fixtures, facilities, appliances, machinery and equipment.

C. Landlord desires to grant Lessee an exclusive option to lease the Site for purposes of building, owning, operating and maintaining the Generating Facility thereon.

D. The Parties desire to agree upon the terms of such lease of the Site should Lessee exercise the Lease Option (as defined below).

E. The Parties are entering into this Agreement to memorialize their understanding regarding the foregoing.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Landlord hereby agree as follows:

1. Definitions.

(a) **"Affiliate"** means, when used with reference to a specified Person, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by or is under common control with the specified Person.

(b) **"Business Day"** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

(c) **"Do Not Disturb Area"** means the areas shown on **Exhibit A-1** that shall be excluded from the Site and excepted from this option, lease, and easement agreement. These areas are reserved to Landlord's use. Further, any portions of the property released by Lessee at any time during the lease term shall be added to the Do Not Disturb Area, not to be utilized by Lessee for any reason. As Lessee determines portions of the Property to be released, Lessee shall ensure that no acreage released is inaccessible to Landlord from the existing driveways/roadways or the County Road directly (i.e., no portions released by Lessee to be surrounded by Lessee's Site without Landlord access).

(d) **"Energy"** means electric energy (alternating current, expressed in kilowatt-hours).

(e) **"Environmental Attributes"** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, in existence and available as of the Effective Date together with those adopted, approved, enacted or issued by any Governmental Entity during the Term (as defined below), attributable to the generation from the Generating Facility, and its displacement of conventional Energy generation. Environmental Attributes include, but are not limited to (1) Renewable Energy Credits; (2) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; and (3) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, irrespective of whether such Environmental Attributes accrue for the benefit of Lessee, any Affiliate, or any investor of Lessee to any Affiliate. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Generating Facility, (ii) emission reduction credits encumbered or used by the Generating Facility for compliance with local, state, or federal operating and/or air quality permits, and (iii) Environmental Incentives.

(f) **"Environmental Incentives"** means any of the following, whether current and adopted or approved, enacted or issued by any Governmental Entity during the Term (as defined below): (i) investment tax credits attributable to the Generating Facility, any Generating Facility Asset or Energy output, (ii) production tax credits attributable to the Generating Facility, any

Generating Facility Asset or Energy output, (iii) accelerated depreciation attributable to the Generating Facility, any Generating Facility Asset or Energy output, (iv) direct third-party rebates or subsidies for generation of energy by a renewable energy source, (v) fuel-related subsidies or "tipping fees" that may be paid to accept certain fuels, (vi) local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits and (vii) other financial incentives in the form of credits, tax write-offs, reductions, property tax abatements, property tax appraised value limitations, other property tax incentives, or allowances under applicable Law attributable to the Generating Facility, any Generating Facility Asset or Energy output, irrespective of whether such Environmental Incentives accrue for the benefit of Lessee, any Affiliate or any investor of Lessee or its Affiliate.

(g) **"Environmental Laws"** means all federal, state, local and regional laws, statutes, ordinances, orders, rules and regulations relating to the protection of human health or the environment including, without limitation, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., the Hazardous Materials Transportation Action, 49 U.S.C. Section 1804, et seq., the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, and any other applicable federal, state or local law now in force or hereafter enacted relating to waste disposal or environmental protection with respect to hazardous, toxic, or other substances generated, produced, leaked, released, spilled or disposed of at or from the Site, as any of the same may be amended or supplemented from time to time, and any regulation promulgated pursuant thereto.

(h) **"Generating Facility Assets"** means each and all of the assets of which the Generating Facility is comprised, including Lessee's solar energy panels, mounting systems, carports, tracking devices, inverters, integrators, energy storage facilities, and other related equipment and components installed on the Site, electric lines and conduits, protective and associated equipment, improvements, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the Generating Facility.

(i) **"Governmental Entity"** means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, program administrator or other instrumentality of any government, whether federal, state or local, domestic or foreign, or any Person, owned, operated, managed or otherwise controlled thereby.

(j) **"Hazardous Materials"** means without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous substances, toxic substances, pollutants, contaminants, radon, asbestos, lead or lead based paint, oil and petroleum products and their by-products, polychlorinated biphenyls or related materials, and mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduce through the release of spores or the splitting of cells, as those terms may be used or defined in any Environmental Law.

(k) **"Law"** means any national, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to the Agreement or the transaction contemplated thereby.

(l) **“Leased Portion”** means the portion of the Property that is subject to the terms of this Agreement and is labeled ___ in Exhibit A.

(m) **“Lessee’s Financing Parties”** means any Persons, and their successors and assignees, providing funding in connection with any hedge provider, development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility.

(n) **“Mineral Holdouts”** means those areas and acres of the Property designated as such on **Exhibit B** attached hereto and such other areas as Landlord and Lessee may mutually agree from time to time.

(o) **“Minimum Acreage”** means 24.5 acres.

(p) **“Person”** means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity, limited liability company, or any other entity of whatever nature.

(q) **“Renewable Energy Credits”** means certificates, green tags, or other transferable indicia indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to all of the Energy output during the Term (as defined below) created under a renewable energy, emission reduction, or other reporting program adopted by a governmental authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions); excluding, however, all Environmental Incentives.

2. Lease Option.

(a) **Option Grant.** For the non-refundable sum of [REDACTED] (the **“Execution Payment”**) paid in hand and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, Landlord hereby grants Lessee the exclusive option (**“Lease Option”**) to lease the Site (the **“Lease”**) upon the terms and conditions set forth herein. Lessee shall have the right to exercise the Lease Option by notice in accordance with the terms of this Agreement (**“Exercise Notice”**) at any time prior to the end of the Lease Option period (the **“Lease Option Termination Date”**).

(i) **Escrow.** Immediately following full execution of this Agreement, the Parties shall open an escrow relating to this Agreement and the transactions contemplated hereunder with Stewart Title Guarantee Company or other escrow company (**“Title Company”**) acceptable to Lessee (**“Escrow”**). All costs related to the Commitment for Title Insurance shall be borne by Lessee, unless specifically stated otherwise in this Agreement.

(ii) **Title Commitment.** Lessee may obtain a current commitment by the Title Company to issue to Lessee a Leasehold Owner’s Policy of Title Insurance (the **“Title Policy”**) on the standard form in use in the Commonwealth of Kentucky, insuring good and indefeasible title to Lessee’s rights in the Property, subject only to the Permitted Liens and the standard printed exceptions (**“Commitment for Title Insurance”**) as set forth below, issued by insurance carrier(s)

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reasonably acceptable to Lessee. All costs, expenses and premiums and costs relating to the Title Policy shall be borne by Lessee. At any time at least 120 days before the end of the Option Period, Lessee may notify Landlord in writing of any easements, restrictions, liens, encumbrances and/or other title deficiencies other than Permitted Liens that are not acceptable in the sole and absolute discretion of Lessee ("**Title Deficiencies**"). Title Deficiencies shall be handled pursuant to Section 2(a)(iv)(F) below. "**Permitted Liens**" shall mean: (a) all easements and restrictions of record set forth in the Title Commitment to which Lessee does not object; (b) the lien for real estate taxes and statutory liens for taxes not yet due and payable; (c) public right of ways and legal highways, (d) zoning ordinances; (e) any mortgage existing as of the Effective Date (subject to the requirements below to obtain a SNDA); and (f) any other matters accepted by Buyer in accordance with Section 2(a)(iv)(F) below.

(iii) **Memorandum.** Lessee shall prepare and Landlord shall sign a notarized Memorandum of Land Option and Lease and Easement Agreement ("**Memorandum**") contemporaneously with the execution of this Agreement, and deliver the Memorandum to Lessee with the instruction to record the Memorandum with the County Clerk of the County where the Property is located contemporaneously with the Effective Date. The Memorandum shall include all material provisions of this Agreement required by applicable law, but shall not make any reference to specific amounts set forth in any payment provisions herein.

(iv) **Due Diligence.** During the Option Period, Lessee shall have the right to conduct due diligence review of the Property and related matters, including, without limitation the following:

(A) On-site geological and environmental testing;

(B) Determining the feasibility of obtaining the necessary land-use, grid interconnection and transmission permits for the Generating Facility;

(C) Inspection of title to Property;

and Landlord shall:

(D) Within ten (10) days following the Effective Date, deliver to Lessee any of the following which Landlord has in its possession or over which it has reasonable control:

(i) Legible copies of the bills issued for the most recent tax year for all real estate taxes due on the Property;

(ii) All reports, studies, drawings, or analyses (collectively, "**Reports**") relating to the Property, including (without limitation), geotechnical, environmental, architectural, surveys and/or engineering Reports;

(iii) All title reports, title polices, deeds, leases, licenses, easements, and other agreements affecting the Property or any portion thereof; and

(iv) All notes, memoranda and written communications relating to the development of the Property, including (without limitation), negotiations with any

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governmental or quasi-governmental agencies; provided, however, Landlord shall have no duty to generate any of the items listed in (i) through (iv) of this Article 2(iv)(D) that do not already exist on the Effective Date.

(E) Upon notice (the "**Mineral Notice**") from Lessee of any such mineral interest disclosed by the Commitment for Title Insurance, Landlord shall use its best efforts, at its sole cost and expense, to (1) acquire any subsurface oil, gas and mineral interests (a "**Mineral Interest**") severed from Landlord's title to the Property or (2) obtain any surface waiver required by Lessee from the holder and/or operator of any Mineral Interest severed from Landlord's title to the Property, which shall be completed to Lessee's reasonable satisfaction (and pursuant to documents and agreements in form and substance reasonably acceptable to Lessee) as promptly as practicable after Lessee's delivery of the Mineral Notice. If Landlord is unable to complete the foregoing within 90 days after delivery of the Mineral Notice, Lessee, at its sole option, may elect to pursue such acquisitions or waivers at its own expense. If Lessee elects to pursue such acquisitions and waivers, Landlord, upon Lessee's request, agrees to take all actions reasonably necessary in connection therewith.

(F) Landlord shall use its best efforts to eliminate any Title Deficiencies before the end of the Option Period. In the event that Landlord is unable to remove Title Deficiencies within such time period, Lessee may, at its sole option, extend the Option Period [REDACTED] to allow Landlord to continue its efforts to remove Title Deficiencies (unless a longer extension is mutually agreed upon in writing by the Parties). If at the end of the Option Period (as such may be extended) Landlord has been unable to remove all Title Deficiencies to Lessee's satisfaction, then Lessee shall have the right, in its sole discretion, to either exercise the Option (and accept the title with all uncured Title Deficiencies) or terminate this Agreement (which termination shall be Lessee's sole and exclusive remedy for Landlord's failure to cure any Title Deficiencies).

(G) Landlord shall use commercially reasonable efforts to support Lessee in conducting its due diligence, including without limitation, granting access to the Property, cooperating with zoning and conditional use permit queries and applications to the County in which the Property is located, and other similar activities of Lessee. [REDACTED]

[REDACTED]. Lessee shall promptly restore any and all soil borings or other soil disturbance caused by Lessee during its performance of any testing during the Option Period as soon as reasonably practicable after the disturbance is generated to a condition reasonably similar to its original condition.

(H) Lessee shall not be permitted to commence construction of any Solar Generating Facility, or the components thereof, on any portion of the Property (other than meteorological and solar and radiation measurement, monitoring and recording equipment and facilities) unless and until Lessee has exercised the Option with respect to such portion of the Property. [REDACTED]

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(I) Landlord reserves the right (i) during the Option Period to use the Property and conduct activities on the Property for any purpose (including farming, ranching, grazing, conservation, and hunting) other than oil, gas and other mineral exploration, development and operations, and further reserves the right to lease the Property and grant temporary licenses and easements and other rights on, over, under and across the Property to other persons, entities and governmental authorities. Landlord further reserves the right to the proceeds from any timber salvaged from the property by Lessee during site preparation.

(v) **Acreage.** The exact portion of the Property to be leased by Lessee for the Site shall be determined prior to the Lease Commencement Date (as hereinafter defined), based on the results of a survey to be obtained by Lessee during the Option Period. The Site shall include the total gross acreage of the Property less any acreage reserved to the Landlord and defined in the Do Not Disturb Area or acreage constituting restrictions or easements that restrict development and/or operation of the Generating Facility. For the purpose of calculating Option Payments, and only until such survey is completed, the number of acres of the Property on which Option Payments shall be made (the "**Option Payment Property**") shall be the greater of (a) Minimum Acreage or (b) those acres of the Property that fall within the County tax appraisal assessed acreage (or equivalent), less acreage constituting Mineral Holdouts and the Do Not Disturb Area. The Option Payment Property may be reduced by Lessee at any time, subject to the Minimum Acreage, during the Option Period (a) if Lessee determines in its sole discretion that less acreage is required for the Generating Facility or (b) based on the results of a survey, the elimination of any portion of the Property pursuant to Section 2(a)(vi) below, and/or any restrictions and/or easements that prevent the development and/or operation of the Generating Facility. Once such survey is completed, the Option Payment Property and the property subject to the Lease Option shall be those acres of the Property constituting the Site. Regardless of the acreage determined by said survey, the Landlord will be compensated based on the Minimum Acreage as specified hereinabove as 24.5 acres.

(vi) **Subdivision.** Prior to the Lease Commencement Date, Lessee shall have the right to designate the boundaries and acreage it desires for the Site within the boundaries of the Property and based on Lessee's specifications. Lessee shall have the right, at its sole cost and expense, to seek all permissions and consents necessary to create the Site parcel by subdivision in compliance with the Law. Landlord agrees to cooperate with Lessee in this regard to the extent reasonably requested. [REDACTED]

(vii) **[Intentionally Omitted]**

(viii) **Subordination.** Landlord, at its sole cost and expense, no later than one hundred eighty (180) days after the Effective Date, shall use commercially reasonable efforts to obtain from the holder of any existing mortgage and other encumbrances identified by Lessee in writing (such holder, an "**Existing Lien Lender**") an agreement that so long as Lessee is not in default in the performance and observance of any covenant, condition, term or provision of this Agreement beyond any applicable grace or cure period, such Existing Lien Lender will not disturb Lessee's rights under this Agreement, which subordination and non-disturbance agreement (each an "**SNDA**") shall otherwise be in form and substance reasonably satisfactory to Lessee and Existing Lien Lender and shall be recorded in the real property records of the county in which the Site is located. Should the Landlord be unsuccessful in obtaining from the holder of any existing

mortgage or other encumbrances as identified by Lessee in this Agreement, the Lessee shall then make commercially reasonable efforts to obtain said subordination and non-disturbance agreement from Existing Lien Lender at its own expense. Should Lessee be unsuccessful in obtaining said subordination and non-disturbance agreement and the parties choose not to pursue this Agreement, neither party shall be liable to the other for any damages arising out of this failure of the Existing Lien Lender to agree to a subordination and non-disturbance agreement.

(ix) **Option Period.** The "*Option Period*" shall commence on the Effective Date and end [REDACTED]

(x) **Entitlement Phase.** During the Option Period, Lessee may initiate the process of obtaining and negotiating, as applicable, the land-use and Generating Facility entitlements (e.g., conditional use permits, re-zoning, platting and/or subdivision of the Property, grid interconnection and transmission agreements, power purchase agreements, and the like) necessary to develop and operate the Generating Facility (the "*Minimum Entitlements*"). Landlord shall support Lessee in these efforts and shall not unreasonably withhold the granting of Limited Power of Attorney to the Lessee for the purpose of carrying out the entitlement activities described above. However, Lessee shall not change any attributes "running with the land" or otherwise encumbering the Property on a permanent basis, such as zoning, until after or concurrent with the Lease Commencement Date (as defined below) or earlier with the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. Lessee may enter into other agreements, such as (but not limited to) interconnection and transmission agreements, at Lessee's sole discretion; provided, however, that no such agreement shall constitute an encumbrance or lien on the Property as a matter of record, until after or concurrent with the Lease Commencement Date or earlier with the prior written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed. Lessee shall be solely responsible for all costs associated with its efforts to obtain the Minimum Entitlements, including but not limited to land-use permits, interconnection and transmission applications and agreements, and shall hold Landlord harmless from, and shall reasonably indemnify Landlord for, such costs.

(xi) **Escrow Closing Date.** The distribution of funds held in Escrow to Landlord (the "*Closing of Escrow*") shall occur within ten (10) Business Days following satisfaction or waiver (evidenced in a signed writing by the Parties) of the following conditions to closing:

A. Delivery of Exercise Notice. Execution and delivery of the Exercise Notice by Lessee to each of Landlord and Title Company.

B. Deposit of Quarterly Rent. Deposit with Title Company by Lessee of the first installment of Quarterly Rent as outlined in Section 5 below.

C. Title commitment. Commitment by Lessee's title company to issue a title policy in favor of Lessee omitting all exceptions to title, except the Permitted Liens, that were not approved by Lessee.

D. Termination of leases and related contracts. Termination by Landlord of any and all outstanding leases affecting the Site, and actual vacation of the Site by

any and all tenants, if any. [REDACTED]

[REDACTED] Any and all payments made by Lessee pursuant to this Section 2(a)(xi)(D) shall be deducted in full from Annual Rent (defined below).

E. Mineral Holders. Acquisition of all severed Mineral Interests and surface waivers required under, and in accordance with, Section 2(a)(iv)(E); however, for oil or gas leases executed greater than five years prior to date prior to commencement of the Effective Date which have expired according to the terms of such leases by the prolonged cessation of operations or production shall be considered released upon the execution by Landlord of an Affidavit of Non-Production for the specified period.

F. No condemnation. Confirmation by Landlord that no condemnation or eminent domain proceedings affecting the Site are pending or threatened.

If any of the foregoing conditions to the Closing of Escrow are not satisfied or waived (evidenced in a signed writing by the Parties), Lessee has the right to terminate Escrow and Escrow shall return all amounts deposited, if any (refundable and, except the Execution Payment, non-refundable) to Lessee. However, Lessee at its sole discretion can give the Exercise Notice, waive the unsatisfied conditions, initiate the Closing of Escrow, and commence the Lease. No further payments due to Landlord under this agreement shall be made through Escrow after Lease Commencement Date.

(xii) If any Person holds a lien encumbering the Site ("**Lienholder**"), Lessee shall have the right to remove such lien pursuant to the terms of this subsection (xii) in the event Landlord is in default under any applicable loan agreements, security agreements, or deeds of trust and any applicable cure period has lapsed. Pursuant to the terms of the SNDA, Lessee shall have the right, on Landlord's behalf, to cure Landlord's default, and any amounts paid by Lessee in connection therewith shall be credited against one or more Lease Option Payments or Annual Rent (as defined below) due hereunder.

(b) **Access during Lease Option Period**. As of the Effective Date, Landlord grants to Lessee a non-exclusive right to access the Property at any time while this Agreement is in effect in accordance with the terms and conditions hereinafter set forth ("**Access Right**") for purposes of conducting due diligence on the Property in conjunction with the development, design, planning and permitting of the Generating Facility. Landlord acknowledges and agrees that Lessee's due diligence activities may include, but not be limited to, soil, environmental, meteorological and geological testing. Lessee shall provide reasonable notice to Landlord in advance of Lessee's entry upon the Property for such due diligence activities in order to minimize disruption of Landlord's agricultural operations during the Option Period.

(c) **Landlord's Documentation**. In addition to Landlord's disclosure obligations under this Section 2, Landlord agrees (i) to provide to Lessee reasonable opportunity to inspect and copy any and all additional relevant documentation related to the Property in Landlord's

possession, unless Landlord is contractually bound not to disclose such documentation to third parties, and (ii) to cooperate with Lessee in Lessee's due diligence activities on the Property.

(d) **Prior Site Lease.** Landlord represents and warrants to Lessee that as of the Effective Date, neither the Property, nor any portion thereof, is subject to any lease or other occupancy or use agreement, except for those leases described on **Exhibit C** hereto. Landlord may lease the surface of the Property to third party farmers for the time period ending on the Lease Commencement Date (as defined below), provided, however, that such lease shall be terminable by Landlord upon sixty (60) days written notice.

(e) **Option Termination.** Lessee shall have the right to terminate the Lease Option by written notice to Landlord with immediate effect at any time prior to the Lease Option Termination Date. Any Lease Option payments made by Lessee prior to such termination shall be non-refundable and, if held in Escrow, shall be delivered by Escrow to Landlord. Upon termination of the Lease Option by Lessee, the Parties shall have no further obligation under this Agreement; provided, however, that in the event of termination, Lessee agrees to promptly release or quitclaim all recorded notices and/or options to Landlord.

(f) **Option Payments.** In addition to the Execution Payment paid as a non-refundable independent consideration referenced in Section 2(a) above (subject to Section 2(a)(vii)), Lessee shall make Lease Option payments (each, a "**Lease Option Payment**") to Landlord for the Site as follows:

- (A) [REDACTED]
- (B) [REDACTED]
- (C) [REDACTED]
- (D) [REDACTED]
- (E) [REDACTED]

Each Lease Option Payment shall be paid in four equal quarterly payments. The first installment of the first Lease Option Payment shall be due and payable [REDACTED]

[REDACTED] If Lessee elects to terminate this Agreement, it shall have no obligation to make any Lease Option Payments relating to time periods after the Lease Commencement Date (as defined below) or the effective date of termination, as the case may be.

(g) **Untimely Payment of Lease Option Payments.** In the event Lessee makes any Lease Option Payment more than ten (10) days after the due date for such Lease Option Payment as set forth in subsection (f) above, then the amount of Lease Option Payment due to Landlord shall be increased. [REDACTED]

[REDACTED] In the event Lessee is [REDACTED] late with payment of the relevant Lease Option Payment, then such non-payment by Lessee shall constitute a default under the terms of this Agreement and Landlord may send a default notice (the "**Option Default Notice**") to Lessee [REDACTED]

[REDACTED] If Lessee fails to cure the default prior to the end of the [REDACTED] cure period, Landlord shall have the right to terminate this Agreement with such termination [REDACTED] following Landlord's notice of termination provided to Lessee, whereupon the Parties' obligations under this Agreement shall cease and Landlord shall have the right to pursue any payments accrued and owed by Lessee through such termination date.

3. **Lease.** As of the Lease Commencement Date (as defined below) and only subject to Lessee's exercise of the Lease Option in accordance with Section 2 above, Landlord hereby leases the Site to Lessee upon the terms and conditions stated hereinafter.

4. **Lease Term; Extension Options.** The initial lease term ("**Initial Term**") shall commence on the [REDACTED] ("**Lease Commencement Date**") and shall end on the [REDACTED] ("**Lease Expiration Date**"). Lessee shall have the right to extend the Initial Term [REDACTED] an "**Extension Term**," and, collectively with the Initial Term, "**Term**") by giving Landlord written notice of its intent to extend the Lease [REDACTED]

In the event Lessee elects to exercise its right to extend the lease beyond the Initial Term, the terms and conditions in effect during the Initial Term shall be applicable during each Extension Term.

(a) **Lessee's Termination Right.** The Parties agree that Lessee may terminate this Agreement at any time (the "**Lessee's Termination Right**"). In the event Lessee elects to exercise Lessee's Termination Right, Lessee shall provide Landlord with at least one hundred twenty (120) days' advanced written notice of its intent to terminate the Agreement (the "**Termination Notice**") and of the date of such termination ("**Termination Date**"). Any and all Quarterly Rent (as defined below) paid by Lessee to Landlord prior to the date of Termination Notice shall remain the property of Landlord. Lessee shall pay Landlord all amounts accrued under this Agreement through the date of such termination. In no event shall Landlord have a right to seek damages against Lessee with respect to this Agreement solely by reason of its termination excepting only the amounts accrued through the date of such termination. In the event Lessee terminates this Agreement neither Landlord nor Lessee shall have any further rights, liabilities or obligations under this Agreement except for any of same that expressly survive termination of this Agreement. Within the ten (10) day period following the Termination Date, Lessee shall be obligated to file with the proper county recorder office notice of termination of this Agreement and shall remove all encumbrances recorded against the Site attributable to Lessee, including without limitation those encumbrances arising out of or related to Lessee's acquisition, financing or construction of the Generating Facility or equipment related thereto.

(b) **Landlord's Termination Right.** Except as qualified by Sections 20 and 21, Landlord shall have the right to terminate this Agreement only if (a) a failure by default in the performance of Lessee's payment obligations under this Agreement shall have occurred and remains uncured after all applicable notice and cure periods, (b) Landlord simultaneously notifies Lessee in writing of the default, which notice sets forth in detail the facts pertaining to the default, and (c) the default shall not have been remedied within thirty (30) days after Lessee receives the written notice, or, if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period of time, Lessee, has not begun to diligently undertake the cure within the relevant time period or to thereafter prosecute the cure to completion. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR ANY RIGHTS OR REMEDIES WHICH LANDLORD MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY, WITH RESPECT TO ANY NON-MONETARY DEFAULT UNDER THIS AGREEMENT THAT IS NOT REMEDIED WITHIN THE TIME PROVIDED IN THIS AGREEMENT,** [REDACTED]

5. Rent.

(a) **Rent.** The Parties agree that Lessee shall pay Landlord an annual rent for the Site in the amount of [REDACTED] for the duration of the Term ("**Annual Rent**"). The Annual Rent shall be payable in quarterly installments (the "**Quarterly Rent**"), with the first partial or full payment due on the Lease Commencement Date [REDACTED]

[REDACTED] Any amount of Quarterly Rent paid to Landlord shall be non-refundable. Within five (5) days following the Lease Commencement Date, Landlord shall provide Lessee with Landlord's bank account information, including wiring instructions, enabling Lessee to make timely payments in accordance with the terms of this Agreement. Landlord shall provide Lessee with a prompt written notice (but in any event within three (3) Business Days) following any change in the bank account information that would prevent Lessee from making timely payments. In the event Landlord changes its bank account information and fails to provide Lessee with such new bank account information, then the deadline for any Lease Option Payment due and payable to Landlord shall be extended, without the application of Section 5(b) below, to ten (10) Business Days from the time Lessee is provided with the new bank account information. Any late lease payments shall be subject to the provisions of Section 5(b) below unless such delay in payment is caused by Landlord.

(b) **Untimely Payment of Rent.** In the event Lessee makes any Quarterly Rent payment more than thirty (30) days after the due date for such Quarterly Rent payment, then the amount of Quarterly Rent payment due to Landlord shall be increased, [REDACTED]

[REDACTED] In the event Lessee is

more than thirty (30) calendar days late with payment of the relevant Quarterly Rent payment, then Landlord may send a default notice (the "**Default Notice**") to Lessee providing for a [REDACTED] curing period upon receipt of the Default Notice by Lessee (the "**Curing Period**"). If Lessee fails to cure the default prior to the expiration of the Curing Period, such non-payment by Lessee shall constitute a default under the terms of this Agreement and Landlord shall have the right to terminate this Agreement with such termination [REDACTED] following Landlord's notice of termination provided to Lessee.

6. Permitted Use

(a) During the Term, Lessee shall use the Site for the sole purpose of installation, construction, operation, maintenance, repair, improvement, replacement, and removal of the Generating Facility and uses incidental thereto (the "**Permitted Use**") and for no other business or purpose. The Permitted Use includes without limitation the following:

(i) the exclusive easement and right to, at any time during the Term, erect, construct, reconstruct, replace, relocate, remove, operate, maintain and use the following from time to time, on, under, over and across the Property, in connection with the Generating Facility, whether such Generating Facility is located on the Property or elsewhere on one or more solar energy and battery energy storage projects (in such locations as Lessee shall determine from time to time in the exercise of its sole discretion after notice to Landlord): (a) a line or lines of towers, with such wires and cables as from time to time are suspended therefrom, above ground and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables; (b) facilities consisting of: (A) one or more substations for electrical collection, to step up the voltage, interconnect to transmission line or lines, and meter electricity, together with the right to perform all other ancillary activities normally associated with such a facility as may be necessary or appropriate to service Generating Facility, regardless where located, and (B) an operations and maintenance building, equipment and storage yard for purposes of performing operations and maintenance service on Generating Facility, regardless where located together with the right to perform all other ancillary activities normally associated with such an operation, including the installation of a well to provide water to such operations and maintenance building; and (c) with all necessary easements therefore;

(ii) an exclusive easement and right to, at any time during the Term, capture, use and convert the unobstructed solar resources over and across the Leased Portion of the Property;

(iii) an easement and right on the Leased Portion of the Property to, at any time during the Term, prevent measurable diminishment in output due to obstruction of the sunlight across the Property including but not limited to an easement right to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Leased Portion of the Property which might obstruct receipt of or access to sunlight throughout the Leased Portion of the

Property or interfere with or endanger the Generating Facility or Lessee's operations, as determined by Lessee;

(iv) the easement and right of subjacent and lateral support on the Leased Portion of the Property to, at any time during the Term, do whatever is necessary for the operation and maintenance of the Generating Facility, including, without limitation, guy wires and supports; and

(v) the easement and right to, at any time during the Term, undertake any such purposes or other activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee determines, in its sole discretion, are necessary, useful or appropriate to accomplish any of the purposes or uses set forth in this Agreement or that are compatible with such purposes or uses

The easement rights granted by Landlord under this Agreement constitute **EASEMENTS IN GROSS**, personal to and for the benefit of Lessee, its successors and assigns, as Landlord of such easements, and the Parties expressly agree that such easement rights shall be transferable in accordance with the assignment provisions of this Agreement. The Parties expressly intend for all easement rights herein to be, and for this Agreement to create, **EASEMENTS IN GROSS** in Lessee, and neither such easements nor this Agreement shall be appurtenant to any other property or interest. Should Lessee intend to exercise the above easements in such a manner as to enter upon the Do Not Disturb area or any other areas released by Lessee to Landlord during the Term, however briefly, Lessee shall provide reasonable notice to Landlord in advance of utilizing the easement for these purposes to minimize interference or disruption of Landlord's activities on such reserved areas.

(b) Lessee shall have the right to construct structures on the Site reasonably necessary, required or useful in conjunction with the operation or maintenance of the Generating Facility or enabling the Generating Facility to be connected to an electrical distribution or transmission network.

(c) Notwithstanding anything to the contrary herein, Lessee may utilize the Mineral Holdouts, if any, as a construction lay-down area during the Term; provided, however, that after Lessee elects to exercise Lessee's Termination Right, Lessee shall cease such use and vacate such area upon sixty (60) days' prior written notice from Landlord. Lessee and Landlord shall cooperate with each other to provide reasonable accommodation for any holders of mineral rights to access and utilize the Mineral Holdouts space, provided that such activity does not interfere with the Permitted Use.

(d) Lessee shall have no right to transport, or caused to be transported, topsoil away from the Property, but such restriction shall not prohibit (i) Lessee from grading or other site work on the Site and (ii) removal of de minimis amounts of topsoil in connection with construction, site clean-up or decommissioning.

(e) Soil Erosion Control. Notwithstanding the foregoing, Lessee shall make commercially reasonable efforts to control soil erosion during the term of this Agreement. This shall include, but not be limited to, maintaining a permanent, vegetative cover in all areas within

and adjacent to the Generating Facility. This vegetative cover will not be considered permanent until a groundcover is achieved and is mature enough to survive and mitigate soil erosion.

(f) Crops & Livestock. During the Lease Option Period, Landlord shall have the right to plant farm crops, commence or continue livestock operations, or enter into a lease for the planting of farm crops or the grazing/pasturing of livestock ("**Farm Lease**") on the Property. Any Farm Lease shall be in writing and shall contain a provision that allows the Farm Lease to be terminated by Landlord at any time, but still permits the farming party to complete its crop production cycle within the single crop year ending on October 31 of such year. Lessee shall have the right to give Landlord the Exercise Notice which notice shall be given pursuant to Section 2 [REDACTED] and following receipt of such notice Landlord shall not plant any crops, or purchase any additional livestock, or enter into any Farm Lease, and/or may be required to terminate any existing Farm Lease. [REDACTED]

(g) Lessee shall use minimally invasive construction methods, comply with all environmental and ecological governing authorities' regulations, and shall as soon as practicable after construction of the Generating Facility sow the soil under the Generating Facility in native grasses and pollinators, and shall comply with the following:

(i) During the period before the Lease Commencement Date, all waste, construction debris and excess materials generated by site preparation and construction activities will be disposed of in a timely manner in accordance with local, state and federal laws;

(ii) Lighting shall be limited to the minimum necessary for safe operation, and shall be directed downward, incorporate full cut-off features, and incorporate motion sensors where feasible;

(iii) At no point shall any portion of a solar panel exceed a height of 20 feet as measured from the highest natural grade below each solar panel; and

(iv) Shall not use invasive or nuisance species of plants.

(h) Lessee shall, at Lessee's expense, at all times promptly observe and comply in all material respects with all present and future laws, orders, regulations, rules, ordinances and requirements of federal, state, county and city governments with respect to the construction, operation and decommissioning of the Generating Facility.

7. Mineral and Water Rights

(a) **Ownership and Use by Landlord.** The Parties agree that Landlord shall retain all mineral rights (the "*Mineral Rights*") and water rights ("*Water Rights*") in connection with the Site as of the Effective Date, with the limitation during the Term that Landlord shall have the right to exercise such Mineral Rights and Water Rights only to the extent such exercise does not interfere with Lessee's Permitted Use. During the Term, Landlord shall have no right to enter the Site for exploitation of Mineral Rights or Water Rights, or both, without Lessee's prior written consent, which shall not be unreasonably withheld, provided that such exploitation does not interfere with operation and/or financing of the Generating Facility.

(b) **Use of Water by Lessee.** The Parties agree that the amount of water required by Lessee for operation of the Generating Facility is for cleaning and other maintenance purposes and to establish and/or maintain a dust mitigation cover crop. The Parties will act in good faith to quantify and accommodate Lessee's water requirements from the water district servicing the Property ("*Water District*") or from the Landlord if there is no Water District for the Site. Landlord will support Lessee with Lessee's water supply request.

(c) **Payment for Water.** Landlord shall be responsible for the payment of any applicable annual water availability fees to the Water District or any other Governmental Entity, including, without limitation, any assessment payable to the Water District; [REDACTED]

[REDACTED] Lessee shall be responsible for payment for water actually used by Lessee at the then-current payment rate promulgated by the Water District or Governmental Entity [REDACTED]

[REDACTED] Lessee may utilize water available from existing water wells on the Property. Lessee may also drill such new water wells on the Property as it concludes, in its sole discretion, are necessary for the Project Activities. All water well drilling activities and use must comply with applicable law and permitting requirements. Upon expiration or termination of this Agreement, Lessee shall not remove any water well then existing on the Property.

8. Zoning/Subdivision.

(a) Landlord shall (i) not attempt to alter the current zoning for the Site and (ii) contest any rezoning leading to the increase of the property taxes, unless otherwise requested by Lessee.

(b) In the event Lessee elects to re-zone the Site and notifies Landlord of its intent to change the then-current zoning for the Site (the "*Request for Assistance Notice*"), Landlord agrees to provide Lessee with all support as reasonably requested by Lessee so long as all costs and expenses are borne by Lessee. The Parties agree that all Lessee's requests for support in conjunction with the re-zoning of the Site for Lessee's Permitted Use shall be deemed reasonable. In the event Landlord elects not to assist Lessee as requested within a five (5) day period following the Request for Assistance Notice, Lessee shall have the right to perform any and all acts on behalf

of Landlord that Landlord would be required to perform as if Landlord elected to act as requested in the Request for Assistance Notice. Notwithstanding the foregoing, Lessee shall have the right to rezone the Site as necessary or desirable for the Permitted Use; provided, however, Lessee agrees not to change the zoning designation applicable to the Site to any other designation (i) which would prevent future return to a zoning classification as agricultural after conclusion of the Permitted Use, or (ii) without Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord hereby authorizes Lessee to act as its agent and attorney-in-fact and perform any and all actions to effectuate the proper re-zoning of the Site for the Permitted Use. All costs and fees associated with such rezoning shall be borne by Lessee. Lessee agrees that if any of the Approvals sought by Lessee result in a zone change that would prevent future farming for any time period, Landlord may condition its approval of such zone change on Lessee's exercise of the Lease Option (i.e., such zone change shall not be effective until after Lessee exercises the Lease Option).

9. Sublease. Lessee may sublease all or any portion of the Site to any Person, *provided*, that any sub-tenant shall use the Site only for a Permitted Use in compliance with current zoning or, as applicable, with the then-current zoning change in accordance with Section 8(b) above. Lessee shall remain primarily liable to Landlord for all its duties and obligations under this Agreement notwithstanding any sublease.

10. Taxes. Lessee shall pay all real property taxes [REDACTED]

Each Party shall notify the County Tax Assessor and Tax Collector of the proper address for its respective tax bill. Landlord shall submit the real property tax bill in writing to Lessee within five (5) days after Landlord receives the bill from the taxing authority. [REDACTED]

Landlord shall pay its portion of the real property taxes, [REDACTED]

Lessee shall be responsible for all taxes directly relating to the Generating Facility. Lessee shall have the right, in its sole discretion and at its sole expense, to contest by appropriate legal proceedings (which may be brought in the name(s) of Landlord and/or Lessee where appropriate or required), the validity or amount of any assessments or taxes for which Lessee is responsible under this Agreement. Landlord shall in all respects cooperate with Lessee in any such contest.

11. Ownership of Generating Facility

(a) Landlord acknowledges and agrees that, notwithstanding that the Generating Facility or any Generating Facility Asset may be considered as a fixture on the Site, Lessee or its Affiliate, successor or assignee is the exclusive owner and operator of the Generating Facility, and Landlord may not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber (collectively, a "*Transfer*") the Generating Facility or any interest therein or the leasehold rights to the Site, whether with the fee interest or any other rights to the Site otherwise held by Landlord.

Landlord shall give Lessee at least sixty (60) days' written notice prior to any transfer of all or a portion of the Site identifying the transferee, the portion of Site to be transferred and the proposed date of Transfer.

(b) Landlord agrees and acknowledges that the Generating Facility and all Generating Facility Assets are and shall remain the personal property of Lessee and Lessee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and/or attachments to real property under applicable Laws. Landlord shall have no ownership, lien, security or other interest in any part of the Generating Facility, the Generating Facility Assets, or any profits derived therefrom. Landlord hereby waives all rights, statutory or common law, or claims that it may have in the Generating Facility and the Generating Facility Assets, including, without limitation, any landlord's lien on any property of Lessee.

(c) Landlord acknowledges that Lessee or its Affiliate, successor or assignee is the exclusive owner of electricity (kWh) generated by or stored at/within the Generating Facility and exclusive owner of the Environmental Attributes, Environmental Incentives and Renewable Energy Credits of the Generating Facility.

12. Mechanic's Liens

(a) **Mechanic's Lien.** In the event a mechanic's lien is filed against the Site for Work of Improvement being conducted by Lessee or on Lessee's behalf, Lessee shall use commercially reasonable efforts to resolve the associated claim within sixty (60) days of the filing thereof. In the event Lessee is unable to resolve such claim within the sixty (60) day period and elects to preserve its rights to contest the claim and the lien associated therewith, then Lessee may obtain a bond to cover the mechanic's lien in the event Lessee is unsuccessful in its contest and as a result is unable to satisfy its payment obligations to the respective contractor. In the event Lessee does not cause the mechanic's lien to be removed within sixty (60) following the filing thereof or does not obtain a bond within such sixty (60) day period, then Lessee shall be deemed in default under the terms of this Agreement following written notice from Landlord; following such written notice, Lessee shall have an additional thirty (30) days within which to cause such lien to be released or bonded around. Nothing in this paragraph or this Agreement shall be construed to prohibit Lessee from granting one or more liens on all or any portion of Lessee's right, title or interest under this Agreement as security for the repayment of any indebtedness and/or the performance of any obligation relating in whole or in part to any of the Generating Facility, the Generating Facility Assets, or related rights or property.

13. Landlord's Representations and Warranties; Covenants of Landlord. In order to induce Lessee to enter into this Agreement, Landlord covenants, represents and warrants, as of the Effective Date and throughout the term of this Agreement, as follows:

(a) There are no liens, mortgages or security interests on the Site, except Permitted Liens or as identified in the Commitment for Title Insurance for each applicable parcel.

(b) To Landlord's knowledge, there are no and have never been any Hazardous Materials on the Site.

(c) Landlord is the owner of fee simple title of the Site and has full authority to enter into, execute, deliver and perform this Agreement, and is not in default of any mortgage (or similar financing document affecting or potentially affecting the Site) affecting the Site.

(d) Landlord covenants that Landlord has lawful title to the Site and full right to enter into this Agreement and that Lessee shall have quiet and peaceful possession of the Site throughout the Term.

(e) Landlord has no actual or constructive notice of any condemnation or eminent domain proceedings or negotiations for the purchase of the Site or any part thereof in lieu of condemnation.

(f) To Landlord's knowledge, there are no unrecorded restrictions, easements, leases or agreements affecting the Site that, after the Lease Commencement Date, might prevent or adversely affect the use or occupancy of the Site by Lessee for operation of the Generating Facility.

(g) There are no circumstances known to Landlord or commitments to third parties that may damage, impair or otherwise adversely affect the Generating Facility or its construction, installation or function (including activities that may adversely affect the Generating Facility's exposure to sunlight).

(h) To Landlord's knowledge, there are no Hazardous Materials present at the Site and Landlord has no knowledge of any violation of Environmental Laws relating to the Site. There are no underground storage tanks located on the Site. Landlord has not manufactured, introduced, released or discharged from or onto the Site, the soil or the groundwater any Hazardous Materials nor permitted the same, and Landlord has not used or permitted the use of the Site or any part thereof for the generation, treatment, storage, handling or disposal of any Hazardous Materials. Lessee acknowledges that the Site may have been used for agricultural purposes and may contain chemicals lawfully used for such agricultural purposes.

(i) There is no claim, litigation, proceeding or governmental investigation pending or threatened against or relating to Landlord or the Site which is in conflict with this Agreement or which could have a material adverse impact upon Lessee's Permitted Use.

(j) During the Term, Landlord shall remain current with respect to (i) the payment of all property taxes, fees and special assessments levied against the Property, and (ii) hazard and liability insurance coverage related to the Property, except as noted in Section 18(e) below.

(k) **Noninterference.** Landlord's activities and any grant of rights Landlord makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with: the construction, installation, maintenance or operation of the Generating Facility, whether located on the Property or elsewhere; access over the Property to the Generating Facility; or the undertaking of any other activities permitted under this Agreement. Without limiting the generality of the foregoing, Landlord shall not interfere with solar resources, solar irradiation, direction of light, or sunlight over the Property by engaging in any activity on the Property or elsewhere that might cause a decrease in the output or efficiency of the Generating Facility. Lessee shall have the right to remove any obstructions to the light on the Property that materially and adversely affect its operations if this covenant is violated. Landlord further agrees

to avoid any activities which would cause the introduction of continuous or commercially unreasonable amounts of dust onto the Generating Facility.

(l) **Confidentiality.** Landlord shall maintain in the strictest confidence, for the benefit of Lessee, all solar data, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Generating Facility, and the like, whether disclosed by Lessee, or discovered by Landlord, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landlord, or (ii) was already known to Landlord at the time of disclosure and which Landlord is free to use or disclose without breach of any obligation to any person or entity. Landlord shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee. Notwithstanding the foregoing, Landlord may disclose such information to Landlord's lenders, attorneys, accountants and other personal advisors; any prospective purchaser of the Property; or pursuant to lawful process, subpoena or court order; provided Landlord in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information.

(m) **Waivers.** Landlord waives any and all rights to seek enforcement of any setbacks and setback requirements, whether imposed by law or by any person or entity, including, without limitation, any setback requirements described in the zoning ordinance of the county in which the Property or said land is located or in any governmental entitlement or permit heretofore or hereafter issued to Lessee, its permitted successor, assign or Affiliate ("**Setback Requirements**"). Landlord further waives any Setback Requirements which may apply to the installation of the Generating Facility on the Property. Further, if so requested by Lessee, its permitted successor, assign, or Affiliate, Landlord shall promptly, without demanding additional consideration therefore, execute, and if appropriate cause to be acknowledged and recorded, any setback waiver or other document or instrument required by any governmental authority and to generally cooperate with Lessee in obtaining any such waivers. Landlord acknowledges that certain aspects inherent to the operation of the solar energy facilities may result in some nuisance, such as visual impacts, possible increased noise levels, possible glare, and other possible effects of electrical generation and transmission including without limitation potential interference with radio, television, telephone, mobile telephone or other electronic devices. Without limiting the grant of easements made in this Agreement, Landlord understands and has been informed by Lessee that the Generating Facility on the Property may result in some nuisance, and hereby accepts such nuisance, and Landlord waives its right to object to such nuisance provided that Lessee complies with its obligations in this Agreement.

(n) **Road Use.** Landlord acknowledges Lessee shall be entitled to construct roads, culverts, bridges and related improvements on the Property, and to improve and upgrade any roads, culverts, bridges and related improvements from time to time existing on the Property. Lessee shall have the right to remove fences, gates, cattle guards and any other improvements on structures on the Property which interfere with Lessee's operations. In no event shall Lessee be responsible for any acts or omissions, any removal of fences, roads and other improvements, any damage to the Property, any improvements or other property placed thereon, or any nuisance caused by, any third person who is not a Lessee Party or is not otherwise acting on behalf of Lessee. In the event Lessee crosses or cuts an existing fence line, Lessee shall install a temporary brace during construction

and as appropriate a fence corner, line brace, cattle guard, and/or gate thereafter which meets commercially reasonable industry standards. In the event that Lessee's access to the Property includes use of any portion of an existing roadway also used by Landlord, or a Landlord Party, Lessee shall make reasonable efforts to maintain the roadway so as to prevent excessive degradation of the roadway surface (i.e., excessive rutting or other pitting of the roadway, erosion of the underlying soil or accumulation of standing water may be caused) by Lessee, a Lessee Party or any third party acting on behalf of Lessee.

(o) **Division into Separate Agreements.** Lessee may divide the Property into two (2) or more separate solar energy projects or phases of development if such division becomes necessary to further the development of the Generating Facility. If Lessee elects to divide the Property into two (2) or more solar energy projects or phases of development, then Landlord shall, within twenty (20) days after written request from Lessee, and without demanding any additional consideration, bifurcate this Agreement by entering into and delivering to Lessee new stand-alone Agreements (as many as are necessary for each division) (which shall supersede and replace this Agreement) that provide Lessee with separate option and leasehold estates in different portions of the Property, as designated by Lessee. Each of such new Agreements shall: (i) specify the portion(s) of the Property to be covered thereby (and the term "Property", as used therein, shall refer only to such portion(s)); (ii) contain the same terms and conditions as this Agreement (except for any requirements that have been fulfilled by Lessee, any Assignee, or any other person or entity prior to the execution of such new Agreements, and except for any modifications that may be required to ensure that Lessee's and Landlord's respective combined obligations under such new options/leases do not exceed their respective obligations under this Agreement) and be in a form reasonably acceptable to Lessee and Landlord; (iii) be for a term equal to the then-remaining term of this Agreement; (iv) contain a grant of access, transmission, communications, utility and other easements for the benefit of the bifurcated option and leasehold estates, covering such portion or portions of the Property as Lessee may designate (but only to the extent permitted in this Agreement); (v) require payment to Landlord of only an acreage-proportionate part of the amounts hereof; and (vi) to the extent permitted by law, enjoy the same priority as this Agreement over any lien, encumbrance or other interest against the Property.

(p) **Assignments by Landlord.** The burdens of this Agreement and other rights contained in this Agreement shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Landlord and its successors and assigns. Landlord shall notify Lessee in writing of any sale, assignment or transfer of any of Landlord's interest in the Property, or any part thereof, sixty (60) days prior to any such sale, assignment, or transfer. Until such notice is received, Lessee shall have no duty to any successor owner, and Lessee shall not be in default under this Agreement if it continues to make all payments to the original Landlord before notice of sale, assignment or transfer is received.

14. Treatment of Liens; Third Party Rights.

(a) If at any time during the Term, any lien ("**Lien**") or any third party right ("**Third Party Right**") is found, exists or is claimed to exist against the Site or any portion thereof, that creates (or purportedly creates) rights superior to those of Lessee, and Lessee determines that the existence, use, operation, implementation or exercise of such Lien or such Third Party Right could reasonably be inconsistent with or delay, interfere with, impair or prevent the exercise of any of

Lessee's rights under this Agreement or the financing of the Generating Facility, the Generating Facility Assets, or this Agreement, Lessee shall be entitled to obtain an SNDA from the holder of such Lien or such Third Party Right that is reasonably acceptable to all parties thereto, and Landlord shall use best efforts and diligence in helping Lessee obtain the same. Landlord agrees that any right, title or interest created by Landlord from and after the Effective Date in favor of or granted to any third party shall be subject and subordinate to (i) this Agreement and all of Lessee's rights, title and interests created in this Agreement, and (ii) any and all documents executed or to be executed by and between Lessee and Landlord in connection with this Agreement. Any such SNDA required by Lessee shall include an agreement between Lessee and the holder of a Lien or a Third Party Right that provides that the holder of such Lien or such Third Party Right (i) subordinates such Lien or such Third Party Right to Lessee's interest under this Agreement, (ii) agrees not to disturb Lessee's possession or rights under this Agreement, (iii) agrees to provide written notice of defaults under the Lien or Third Party Right documents to Lessee and agrees to allow Lessee, Lessee's Financing Parties and its Lenders a reasonable period of time following such written notice to cure such defaults on behalf of Landlord, and (iv) agrees to comply with such other requirements as may be reasonably required by Lessee or Lessee's Financing Parties or Lenders to ensure the interests of Lessee or such parties are not interfered with. All SNDAs obtained by Landlord pursuant to this paragraph shall be in a form reasonably acceptable to Lessee and Lessee's Financing Parties and Lenders or other financial parties, if any, and shall be in a form that may be recorded following their execution. No Existing Lien Lender shall have any rights in or to Lessee's rights under this Agreement, the Generating Facility, the Generating Facility Assets or Lessee's moveable trade fixtures or other personal property of Lessee located in or on the Site.

(b) In the event Landlord's default under the terms of any Lien could lead to the foreclosure on the Site, Landlord agrees to provide Lessee with an immediate written notice of such Existing Lien Lender's oral or written intent to foreclose on the Site, allowing Lessee to cure Landlord's default if Landlord is unable or unwilling to do so. [REDACTED]

15. Condemnation.

(a) If all or part of the Site is proposed to be taken as a result of any action or proceeding in eminent domain, or is proposed to be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (collectively, a "**Taking**"), Landlord shall provide Lessee with reasonable advance written notice of any impending proceeding or meeting related to such Taking and shall not in the absence of Lessee settle with the Taking authority or agree on compensation for such Taking. The Agreement shall terminate as to any portion of the Site so condemned or taken (except in the case of a temporary Taking after the duration of which Lessee desires to continue the Agreement, and the Term shall be extended, in such event, by the duration of such temporary Taking). Subject to any applicable law or regulation, if any, any award or other compensation payable as a consequence of such Taking shall be paid as provided in subsection (b) below.

(b) Landlord and Lessee agree that (i) all condemnation awards payable in connection with the taking of all or any portion of the Site shall belong to Landlord, (ii) all condemnation awards payable in connection with the taking of the Agreement except Landlord's existing and future rights to rental income, the Generating Facility, or any Generating Facility Asset due to

condemnation of the Site shall belong to Lessee, and (iii) Lessee shall have the right to file any separate claim available to Lessee related to the taking of the Agreement, the Generating Facility, or any Generating Facility Asset.

16. Quiet Enjoyment. Landlord covenants that Lessee shall peaceably and quietly have, hold and enjoy the Site during the Term and Landlord shall protect and defend the right, title and interest of Lessee hereunder from any other rights, interests, titles and claims arising through Landlord or otherwise.

17. Removal of the Generating Facility and Site Restoration.

(a) Upon expiration of the Term or the earlier termination of this Agreement, Lessee shall, after receipt of written notice from Landlord to Lessee to proceed, at Lessee's sole cost and expense, restore the Site within three (3) months after the expiration of the Term or the earlier termination of this Agreement to the same condition as it was on the Lease Commencement Date, excluding normal wear and tear (or deterioration due to non-usage of such items as drainage systems) as well as groundwater wells and Water Improvements and existing crops and vegetation, by removing from the Site (i) the Generating Facility and any Generating Facility Assets including associated equipment or other personal property owned by Lessee, and (ii) all subterranean foundations, cables, conduits or similar equipment installed by Lessee ("*Restoration Obligation*"). If the Lessee's Restoration Obligation is not fully satisfied within three (3) months, Lessee shall pay Quarterly Rent to Landlord (as determined under Section 5) in advance for each subsequent 3-month period (or portion thereof) that the Lessee's Restoration Obligation remains unsatisfied. Landlord hereby grants to Lessee a license to enter upon the Site to perform Lessee's Restoration Obligation. All restoration work shall be done by a restoration contractor and based on a contract in form and substance as reasonably acceptable to Lessee that will require the contractor to perform all decommissioning activity (including driving of vehicles and pedestrian traffic) on the Site and nowhere else on the Property. Notwithstanding the foregoing, Lessee shall not be obligated to change the then-current zoning for the Site to the zoning in effect as of the Lease Commencement Date. Within ten (10) days of the Lease Commencement Date, Lessee shall obtain and deliver to Landlord a restoration bond, or similar financial assurance, in form and substance acceptable to Lessee and Landlord (the "*Restoration Bond*") securing performance of Lessee's obligation, whether upon expiration of the Term, exercise of a termination right granted hereunder or other termination of this Agreement, to remove the Generating Facility and all other improvements made to and located on the Site and to fully restore the Site pursuant to Lessee's Restoration Obligation. The amount of the Restoration Bond shall be calculated to cover the entire cost to decommission and restore the property [REDACTED]. Once in place, Lessee shall keep such Restoration Bond, or similar financial assurance, in force throughout the remainder of the Term of this Agreement. Beginning in the fifteenth (15th) year of the Term, no more than one time in any five (5) consecutive year period, Landlord may obtain an opinion by an independent third party consultant, appointed by Landlord at Lessee's sole cost and expense and reasonably acceptable to Lessee, of the adequacy of the Restoration Bond for the then estimated net removal costs and, after thirty (30) days' written notice to Lessee, the value of the Restoration Bond shall be increased [REDACTED] at Lessee's sole cost and expense, to reflect the then estimated net removal costs. Landlord shall be permitted to draw upon such Restoration Bond or other financial assurance in the event that Lessee fails to remove the Generating Facility and other improvements and restore the Site as required pursuant to the terms of this Agreement. In the

event that security similar to the Restoration Bond is required by any governmental entity, such security shall be credited against the Restoration Bond.

(b) Lessee shall remove all Improvements and personal property made or placed thereon by Lessee pursuant to this Lease, cover up or fill all pit holes, trenches or other borings or excavations made by Lessee thereon, and otherwise leave the Property in a good, clean condition. Lessee shall restore the Land (and any other land of Landlord impacted by Lessee's use of the Property) to substantially its condition as of the Effective Date using prudent engineering practices where applicable, including, without limitation, the removal of all improvements and alterations to the Land or Property (including, without limitation, all fencing, roads, solar panels and mounting, rock or gravel, concrete pads, underground cables, and subsurface improvements (unless Landlord agrees in advance to the retention of same in writing) and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord elects to allow such lines and connections to remain); provided, however, that Lessee shall not be obligated to regrade the Land or any other property or replant any crops or plants. The removal and restoration shall be completed in a manner that does not materially, adversely affect the potential re-use of the Land or the Property.

(c) All waste and excess materials will be disposed of in accordance with applicable local, state and federal laws, and Lessee shall evaluate the ability to recycle or reuse components of the Generating Facility in connection with decommissioning. All areas on which Lessee removes access roads, Generating Facility Assets and parking areas that were installed by Lessee shall be tilled and leveled with adjacent land. Lessee shall use reasonable efforts to have the perimeter security fence removed near the end of the decommissioning process. Before commencing decommissioning, Lessee will post or otherwise provide contact information for those seeking information about the process.

18. Liability and Indemnity

(a) **Lessee Indemnity.** Lessee shall indemnify, defend and hold harmless Landlord, its trustees, heirs, beneficiaries, successors, agents and employees (the "**Landlord Indemnitees**") of and from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of Lessee, any utility company or Landlord, or other loss or damage incurred by Landlord, arising out of (i) negligence or willful misconduct of Lessee, its agents, officers, directors, employees or contractors; (ii) the construction, operation, or removal of the Generating Facility; or (c) the material breach by Lessee of any of its obligations under this Agreement; except to the extent such damages or claims are directly attributable to the actions or omissions of Landlord or any Landlord Indemnitee. The obligation to indemnify shall extend to and encompass all costs incurred by Landlord and any Landlord Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Notwithstanding the foregoing and in the event Lessee's obligation to indemnify arises pursuant to this Section 18(a), Lessee shall pay for the reasonable expenses of any legal counsel reasonably acceptable to Lessee and engaged by a Landlord Indemnitee to defend a Landlord Indemnitee in connection with an indemnified claim. Lessee's obligations pursuant to this Section 18(a) shall not extend to claims, demands,

lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Landlord, the Landlord Indemnitees, or their respective contractors, successors or assigns, or to the acts of third parties who are not Affiliates, agents, officers, directors, employees or contractors of the Lessee. Subject to this Section 18(a), Lessee shall pay any cost that may be incurred by Landlord or the Landlord Indemnitees in enforcing this indemnity, including reasonable attorney fees. The indemnity provided in this Section 18(a) shall be in addition to and not in derogation or substitution of any indemnity provided elsewhere in this Agreement and shall survive the termination or expiration of this Agreement for a period of one (1) year.

(b) **Landlord Indemnity.** Landlord shall indemnify, defend and hold harmless Lessee, its officers, agents and employees (the "*Lessee Indemnitees*") of and from any claim, demand, lawsuit or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of either Lessee or Landlord, or other loss or damage incurred by Lessee, arising out of: (i) negligence or willful misconduct of Landlord, its trustees, beneficiaries, successors, agents, employees or contractors; or (ii) the material breach by Landlord of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by Lessee and any Lessee Indemnitees in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Landlord's obligations pursuant to this Section 18(b) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Lessee, the Lessee Indemnitees, or their respective contractors, successors or assigns, or the acts of third-parties who are not Affiliates, trustees, beneficiaries, successors, agents, employees or contractors of the Landlord. Landlord shall pay any cost that may be incurred by Lessee or the Lessee Indemnitees in enforcing this indemnity, including reasonable attorney fees. The indemnity provided in this Section 18(b) shall be in addition to and not in derogation or substitution of any indemnity provided elsewhere in this Agreement and shall survive the termination or expiration of this Agreement for a period of one (1) years.

(c) **No Consequential Damages.** Notwithstanding any provision in this Agreement to the contrary, neither Lessee nor Landlord shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out of this Agreement whether by reason of contract, indemnity, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Agreement. The foregoing provision shall not prohibit Lessee or Landlord from seeking and obtaining general contract damages for a breach of this Agreement.

(d) **Specific Performance.** In addition to its other remedies set forth in this Agreement, if Landlord fails to perform its obligations hereunder, Lessee shall have the option to (i) waive such default in writing, or (ii) in seek specific performance of Landlord's obligations under this Agreement.

(e) **Waiver of Remedies.** The express remedies and measures of damages provided for in this Agreement shall be the sole and exclusive remedies for a Party and all other remedies or damages at law or in equity are hereby waived.

to an Assignee in contravention to this Section 20 shall be deemed null and void and shall not relieve the Assignor of any of its duties or obligations hereunder. Notwithstanding the foregoing, Lessee shall have the right to collaterally assign this Agreement, the Generating Facility, and the Generating Facility Assets in accordance with Section 21 to any other party upon notice to, but without the requirement for obtaining the consent of, Landlord.

(b) With respect to an assignment pursuant to Section 20(a), Landlord acknowledges and agrees that, upon receipt of written direction by Lessee's Financing Parties or any other financing-transaction assignee of Lessee (collectively, "**Lender**"), and notwithstanding any instructions to the contrary from Lessee, Landlord will recognize Lender, or any third party to whom Lender has reassigned the rights of Lessee under this Agreement, as the proper and lawful grantee of the Agreement and as the proper and lawful successor to Lessee with respect to access to the Site and fully entitled to receive the rights and benefits of Lessee hereunder so long as Lender (or its assignee) performs the obligations of Lessee hereunder. Landlord shall be protected and shall incur no liability in acting or proceeding in good faith upon any such foregoing written notice and direction by Lender which Landlord shall in good faith believe (i) to be genuine and (ii) a copy of which to have been delivered to Lessee's last known address for Notice. Landlord shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such foregoing notice and direction, but may accept and rely upon them as conclusive evidence of the truth and accuracy of such statements. Landlord agrees to execute and deliver all documents required by Lender to evidence these rights of Lender described herein.

(c) In addition to the foregoing, Landlord agrees and consents as follows:

(i) Landlord agrees to notify Lender in writing, at the address to be designated by Lender, simultaneous to any written notice to Lessee by Landlord hereunder, of any act of default of Lessee under this Agreement of which Landlord has knowledge that would entitle Landlord to cancel, terminate, annul or modify the Agreement or dispossess or evict Lessee from the Site or otherwise proceed with enforcement remedies against Lessee, and Lender shall have the same amount of time as Lessee, but at least thirty (30) days with respect to any monetary default and at least sixty (60) days with respect to any non-monetary default, to cure any default by Lessee under the Agreement; provided that in no event shall Lender be obligated to cure any such default. Lender shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing such defaults. Landlord expressly consents to such substitution, agrees to accept such performance, and authorizes Lender (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Lessee hereunder. Landlord shall not, and shall have no right to, terminate this Agreement prior to expiration of the cure periods available to a Lender as set forth above.

(ii) Notwithstanding that the Generating Facility is present on the Site, and subject to the terms and conditions hereof, Landlord hereby waives, disclaims and releases any lien it may have in and to the personal property used by Lessee in the conduct of its business and which is or may from time to time hereafter be located at the Site.

(iii) Landlord consents and subordinates its interest to Lender's security interest in the Generating Facility and the Generating Facility Assets and waives all right of levy for rent

and all claims and demands of every kind against the Generating Facility and the Generating Facility Assets, such waiver to continue so long as any sum remains owing from Lessee to the Lender. Landlord agrees that the Generating Facility and the Generating Facility Assets shall not be subject to distraint or execution by, or to any claim of, Landlord. Landlord hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent Lender from the Site for the purpose of inspecting the Generating Facilities.

(iv) Landlord hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent Lender from the Site for the purpose of inspecting the Generating Facility.

(v) Lender shall have the absolute right to do one, some or all of the following things: (A) assign its mortgage; (B) enforce its mortgage; (C) acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means) to the leasehold real estate interest created by the Agreement (the "*Estate*"); (D) take possession of and operate the Estate or any portion thereof; (E) perform any obligations to be performed by Lessee under the Agreement; (F) assign or transfer the Agreement and the Estate to a third person after obtaining the same; (G) exercise any rights of Lessee under the Agreement; or (H) cause a receiver to be appointed to do any of the foregoing or any other things that Lender is entitled to do under this Section 20. Landlord's consent shall not be required for any of the foregoing, and upon acquisition of the Estate or the Agreement by Lender or any person who acquires the same from or on behalf of Lender, Landlord shall recognize Lender or such other person (as the case may be) as Lessee's proper successor, and the Agreement shall remain in full force and effect.

(vi) Lender shall not have any obligation under the Agreement prior to the time that it succeeds to absolute title to the Estate. Lender shall be liable to perform obligations under the Agreement only for and during the period of time that Lender directly holds such absolute title. Further, if Lender elects to (A) perform Lessee's obligations under the Agreement, (B) continue any operations on the Estate, (C) acquire any portion of Lessee's right, title, or interest in the Estate or in the Agreement or (D) enter into a new agreement, then Lender shall not have any personal liability to Landlord in connection therewith, and Landlord's sole recourse in the event of a default by Lender shall be to execute against Lender's interest in the Estate and the solar energy facility Lessee intends to build, own, operate and maintain thereon, or to collect Net Removal Costs from the Restoration Bond under Section 17 above. Moreover, any other Lender or other person that acquires the Agreement or the Estate pursuant to foreclosure or an assignment in lieu of foreclosure shall not be liable to perform any obligations hereunder to the extent the same are incurred or accrue after Lender or such other person no longer has ownership of the Estate.

(vii) There shall be no merger of the Agreement or the Estate with the fee estate in the Property by reason of the fact that the Agreement or the Estate or any interest in the Estate may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property, and all persons (including each Lender) having an interest in the Agreement or in the estate of Landlord and Lessee shall join in a written instrument effecting such merger and shall duly record the same.

(viii) With respect to the disposition of any condemnation award and/or casualty insurance proceeds allocable to the Estate, or the Generating Facility, said proceeds shall be governed by the terms of the documents evidencing the financing, as amended, modified, supplemented or amended and restated and in effect from time to time. The aforementioned documents shall have no effect on the distribution of funds related to the fee interest in the Property, which shall belong solely to the Landlord.

21. **Financing; Classification of Generating Facility; Lender Protection.**

(a) **Financing.** Lessee may pledge its interest in this Agreement, the Generating Facility, and the Generating Facility Assets as security for loans or financing against its property. Subject to Landlord's commitments under Section 20 and this Section 21, if Lessee's Lender(s) requests additional terms and conditions to those already provided in this Agreement, Landlord agrees to consider any such requests in good faith. Landlord acknowledges that Lessee will be financing the acquisition and installation of the Generating Facility with financing accommodations from one or more financial institutions and that Lessee's obligations will be secured by, among other collateral, a pledge or collateral assignment of this Agreement and Lessee's rights to payment and a first security right in the Generating Facility.

(b) **Classification of Generating Facility as Personal Property Only.** Landlord acknowledges that it has been advised that part of the collateral securing financial accommodations of Lessee is the granting of a first priority security interest ("**Security Interest**") in the Generating Facility to Lender to be perfected by a filing under the Uniform Commercial Code (UCC) and to be documented in a recorded notice on title to the Site. Landlord agrees to such filings. These filings by Lessee or Lender may include:

(i) UCC filing of a Financing Statement (FORM UCC-1) which clearly covers the Generating Facility as personal property only and not as a fixture.

(ii) Real estate filing ("**Fixture Filing**") in the appropriate office for recording of real estate records of the jurisdiction of the Site; such filing shall not create any interest in or lien upon the real property underlying the Site or the interest of the Landlord.

(iii) Landlord will use commercially reasonable efforts to place its successors, assigns, and lienors on notice of the ownership of the Generating Facility by Lessee and/or its Lender(s), the existence of the security interest, and the fact that the Generating Facility is not part of the Site or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

(c) **Lender Protection.** Landlord expressly agrees, for the benefit of each Lender, and provided such Lender has delivered written notice to Landlord specifying its address for notice purposes, as follows:

(i) If this Agreement terminates because of Lessee's default or if the interest of Lessee under this Agreement is foreclosed, or if the Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Landlord shall, upon written request from any Lender within ninety (90) days after such event, enter into a new lease agreement for the Site, on the following terms and conditions:

(A) The term of the new lease agreement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the Term of this Agreement, at the same fees and payments and subject to the same terms and conditions as set forth in this Agreement.

(B) The new lease agreement shall be executed within thirty (30) days after receipt by Landlord of written notice of the Lender's election to enter a new lease agreement, provided said Lender: (i) pays to Landlord all fees and payments and other monetary charges payable by Lessee under the terms of this Agreement up to the date of execution of the new lease agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed; (ii) performs all other obligations of Lessee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee that are reasonably susceptible of being performed by the Lender and would have accrued under this Agreement up to the date of commencement of the new lease agreement. Any new lease agreement granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrances or other interest created by Landlord.

(C) At the option of Lender, the new lease agreement may be executed by a designee of such Lender without the Lender assuming the burdens and obligations of the Lessee thereunder.

(D) If more than one Lender makes a written request for a new lease agreement pursuant hereto, the new lease agreement shall be delivered to the Lender requesting such new lease agreement whose mortgage is prior in lien, and the written request of any other Lender whose lien is subordinate shall be void and of no further force or effect.

(E) The provisions of this Section 21(c) shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Landlord, Lessee and Lender, and, from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new lease agreement, such Lender may use and enjoy the Site without hindrance by Landlord or any person claiming by, through or under Landlord, provided that all of the conditions for a new lease agreement as set forth herein are complied with.

(ii) Notwithstanding any provision of the Agreement to the contrary, the Parties agree that so long as (a) there exists a mortgage in favor of a Lender that secures unpaid indebtedness, (b) Landlord has been provided advance written notice of the mortgage to Lender, and (c) Lender has not defaulted on its obligations hereunder if Lender has succeeded to absolute title to the Estate, this Agreement shall not be modified or amended and Landlord shall not accept a surrender of the Site or any part thereof or a cancellation or release of this Agreement from Lessee prior to expiration of the Term without the prior written consent of Lender. This provision is for the express benefit of and shall be enforceable by Lender.

(iii) No payment made to Landlord by a Lender shall constitute an agreement that such payment was, in fact, due under the terms of the Agreement; and a Lender having made

any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.

(iv) At Lessee's request, Landlord shall amend this Agreement to include any provision which may reasonably be requested by a proposed Lender; provided, however, that such amendment does not impair any of Landlord's rights under this Agreement or materially increase the burdens or obligations of Landlord hereunder. Upon request of any Lender, Landlord shall execute any additional instruments reasonably required to evidence such Lender's rights under this Agreement.

22. Further Assurances

(a) Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 22. Lessee shall be responsible for reasonable costs that Landlord incurs as a result of Landlord's obligations under this Section 22(a), and Landlord shall be responsible for reasonable costs that Lessee incurs as a result of Lessee's obligations under this Section 22(a). In conjunction with the execution of this Agreement, Landlord agrees to execute the Owner's Affidavit Regarding Land Entitlement as reasonably agreed to by the parties, or any other form that is reasonably required by County for non-landowners to proceed with the entitlement process.

(b) From time to time, upon written request by Lessee (or its Lenders or Lessee's Financial Parties), Landlord shall provide within seven (7) days thereafter (i) a lien waiver from any party purporting to have a lien, security interest or other encumbrance on the Site as a result of a contractual arrangement with Landlord under this Agreement, confirming that it has no interest in the Generating Facility, or (ii) an estoppel certificate attesting, to the knowledge of Landlord, to Lessee's compliance with the terms of this Agreement or detailing any known issues of noncompliance, and such other matters as Lessee may reasonably request. The failure of Landlord to deliver such statement within such time shall be conclusive evidence upon Landlord that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

(c) In the event Lessee or any Affiliate of Lessee requests from Landlord during the Option Period or Term the grant of an easement for grid interconnection purposes on the Site (that may be separate from the Lease) or on any other property owned by Landlord neighboring the Site, Landlord shall grant such easement to the requesting party upon terms and conditions reasonably acceptable to Landlord and at Lessee's sole cost and expense. Landlord shall use reasonable commercial efforts to support Lessee or its Affiliates in conjunction with any grid interconnection sought by Lessee or Lessee's Affiliates, and Landlord shall, at Lessee's sole cost and expense, including reasonable attorney's fees incurred by Landlord for review of the proposed documents to be executed by Landlord, execute such additional documents, instruments and assurances and take such additional actions as Lessee or its Affiliate deems reasonably necessary or desirable with respect to such grid interconnection.

23. Recording.

(a) **Memorandum of Agreement.** Landlord agrees to execute a Memorandum of this Agreement, in form and substance satisfactory to the Parties, which Lessee may record with the appropriate recording officer. The date set forth in the Memorandum of Agreement is for recording purposes only. Upon termination of this Agreement for any reason, Lessee shall promptly record with the County Clerk's Office a release acknowledging that the Memorandum is terminated and that Lessee has no further interest of any kind in and to the Site. A copy of the recorded release shall be provided to Landlord within ten (10) Business Days of termination of this Agreement.

(b) **Ancillary Documentation.** Landlord agrees to Lessee's making of any filings against the Site required by Lender or to record any easements or other rights granted under this Agreement.

(c) **Easements.** If there is an existing condition on the Property for which an easement has not been recorded (e.g., a county road, irrigation canal, power lines or similar rights), and a request to record such easement is made during the Term, the Option Period by any Governmental Entity, Landlord agrees to cooperate with same and to record an easement (or, if requested, an irrevocable offer of dedication) consistent with the existing condition on the Property. Lessee will only make such recording after or concurrent with the Lease Commencement Date or earlier with prior written consent of Landlord. If such easement or dedication results in a loss of Site acreage, the Annual Rent shall be recalculated based on such reduced acreage, subject to the Minimum Acreage. Landlord shall notify Lessee of any such easement request and provide Lessee with a copy of the recorded easement.

24. **Meteorological Station License.**

(a) Effective as of the Effective Date, Landlord hereby grants to Lessee an exclusive license (the "**Station License**") over a portion of the Property as mutually agreed by the Parties (the "**Station Site**") for the purpose of installing, operating, maintaining, repairing and removing a meteorological station ("**Station**") thereon, coupled with a right of ingress and egress over the Property for the purpose of accessing the Station Site. The Lessee, together with its representatives, agents and contractors, shall have the right to access the Station Site twenty-four hours a day, seven days a week for the purpose of installing, operating, maintaining repairing and removing the Station. Reasonable notice to Landlord of Lessee's intended access, or schedule of accesses, to the Property shall be given in advance during the Option Period, if said Option is exercised. The Station License shall be irrevocable by Landlord during the period [REDACTED]

(b) The Station and all data generated by the Station are the property of the Lessee, and Landlord expressly disclaims any interest therein. Upon termination of this Agreement, the Lessee shall cause the Station to be removed from the Station Site and shall fill all holes caused by such removal within the three (3) month period provided for in Section 17 above, and Landlord hereby grants the Lessee and its agents and representatives a right of ingress and egress over the Property and the Station Site for the purpose of permitting the Lessee to complete the foregoing.

(c) The Lessee HEREBY (I) ASSUMES ALL RISKS AND (II) RELEASES AND DISCHARGES Landlord from any and all losses, claims, demands, costs and expenses arising out

of or in any way related to any damage (including damage by theft or vandalism) to the Station. The Lessee acknowledges that Landlord has no responsibility to provide security (including lights or fencing) for the Station.

(d) The Lessee shall indemnify, defend and hold harmless the Landlord Indemnitees of and from any loss, damages, claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of the Lessee or Landlord, and damage or destruction of property, including, but not limited to, property of the Lessee or its affiliates, any utility company or Landlord, or other loss or damage incurred by Landlord, arising out of or in any way related to the Station (including but not limited to its installation, maintenance or removal). The obligation to indemnify shall extend to and encompass all costs incurred by Landlord and any Landlord Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. The Lessee's obligations pursuant to this Agreement shall not extend to claims, demands, lawsuits or actions for liability attributable solely to the negligence or willful misconduct of Landlord, the Landlord Indemnitees, or their respective contractors, successors or assigns. The Lessee shall pay any cost that may be incurred by Landlord or the Landlord Indemnitees in enforcing this Agreement, including reasonable attorney fees.

25. Dispute Resolution and Mediation

(a) The Parties, through their respective Chairman, CEO, President or other authorized representative, shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "*Dispute*") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

(b) If, after such negotiation in accordance with Section (a)25(a) above, the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, the Chairman, CEO, President or other authorized representative of each Party shall meet for at least three (3) hours with a mediator whom the Parties choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the mediation services of JAMS to appoint a mediator. The mediator's fee and expenses shall be paid one-half by each Party.

(c) In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to Sections 25(a) or 25(b), both Parties shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

(d) All mediations pursuant to Section 25(b) shall be held in Washington County Kentucky, or such place as is mutually acceptable to Lessee and Landlord. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky, excluding principles thereof governing conflicts of law. In the event of any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation, termination, breach, existence, scope, or validity thereof, the Dispute shall be resolved in Washington County, Kentucky only, either by a bench trial, or if the Parties agree, by arbitration. Each of the Parties hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court and waives any objection which it may have to the laying of

venue of any proceedings brought in any such courts; and any claim that such proceedings have been brought in an inconvenient forum. Each of the Parties agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon each of the Parties, and may be enforced in any other jurisdiction, by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

(e) WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING OR HEARING BROUGHT BY A PARTY HERETO OR ITS SUCCESSORS AND ASSIGNS ON ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES HERETO, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE, OR REGULATION, EMERGENCY OR OTHERWISE, NOW OR HEREAFTER IN EFFECT.

26. Amendments. This Agreement may be amended only in writing signed by Lessee and Landlord or their respective successors in interest; provided, however, if Landlord has been notified that Lessee has assigned any of its rights, duties or obligations under this Agreement to a Lender, then the prior written consent of Lender is required as well.

27. Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided immediately thereafter in accordance with the requirements of this Section 27 by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile. A Party may change its address by providing notice of the same in accordance with the provisions of this Section 27.

If to Landlord:

Jonathan M. Hagan
890 Jackson Branch RD
Springfield, KY 40069

[REDACTED]
[REDACTED]

If to Lessee:

BrightNight LLC
Atten: Legal
13123 E. Emerald Coast Pkwy, Suite B #158
Inlet Beach, FL 32461

With a copy to: _____

28. Entire Agreement; Amendments. This Agreement (including the exhibits, schedules and any written supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Except as otherwise expressly provided in this Agreement, in order to be effective any amendment, modification or change to this Agreement must be in writing and executed by both Parties.

29. Survival. Any provision(s) of this Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

30. Severability. If any part, term, or provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect or impair the validity, legality or enforceability of any other part, term or provision of this Agreement and shall not render this Agreement unenforceable or invalid as a whole. Rather the part of this Agreement that is found invalid or unenforceable will be amended, changed or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision, within the limits of applicable Law, and the remainder of this Agreement will remain in full force and effect.

31. Waiver. The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

32. Governing Law. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Kentucky.

33. Brokerage Commissions. Each Party warrants to the other that no person or entity has a right to claim a real estate commission, finder's fee or any other form of compensation with respect to the transaction contemplated by this Agreement (collectively, "**Real Estate Compensation**"). Each Party hereby agrees to indemnify, defend and hold harmless the other Party from and against claims for Real Estate Compensation asserted by any third party as a result of actions by the indemnifying Party claimed to give rise to brokerage commissions payable as a result of the execution of this Agreement, which indemnification shall survive the expiration or earlier termination of this Agreement.

JH/zk

MH

34. No Election of Remedies. Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to such Party's other remedies under this Agreement or available at law or in equity.

35. No Recourse to Affiliates. This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

36. Relationships of Parties. The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose, unless expressly stated otherwise herein.

37. No Third Party Beneficiaries. Nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, except with respect to Lessee's Lender to the extent expressly provided herein.

38. Attorneys' Fees; Costs. In the event of any action, arbitration, claim, suit or proceeding between the Parties relating to this Agreement or the subject matter hereof, the prevailing Party will be entitled to recover its reasonable attorneys' fees and expenses and costs of such action, claim, suit or proceeding, in addition to any other relief granted or awarded. Lessee will reimburse all legal expenses including attorney's fees of up to \$2,500 incurred by Landlord for the review and negotiation of this Agreement within thirty (30) days following execution of this Agreement. Lessee will pay reasonable attorney's fees incurred by Landlord not to exceed \$1,000 for each request to review of any phasing or bifurcation documents, subordination or other additional legal documents proposed by Lessee for Landlord's signature after the Effective Date and related specifically to Landlord's duties under this Agreement. Except as set forth herein, each party shall be responsible for its own attorneys' fees and other expenses.

39. Days. If any action is required to be performed, or if any notice, consent or other communication is given, on a day that is a Saturday or Sunday or a legal holiday in the jurisdiction in which the action is required to be performed or in which is located the intended recipient of such notice, consent or other communication, such performance shall be deemed to be required, and such notice, consent or other communication shall be deemed to be given, on the first Business Day following such Saturday, Sunday or legal holiday. Unless otherwise specified herein, all references herein to a "day" or "days" shall refer to calendar days and not Business Days.

40. Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Agreement received by either Party by facsimile transmission, e-mail or electronic signature/electronic execution is binding upon the other Party as an original and shall have the full force and effect of an original signature.

41. General Interpretation. The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the

Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument of any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under this Agreement. No rule of strict construction will be applied against any Person.

42. Vegetative Screening and Fencing. To the extent Lessee places above ground Solar Facilities on the Property, Lessee agrees to plant trees along project areas that are visible from private drives and lines of sight accessible via private property. Lessee shall plant trees of a species of the Lessee's choice, but which will be of the evergreen variety. At planting, such trees will be a minimum of 4' tall and 6' apart.

43. Environmental Clean-up. In the event that a notice is received from a governmental authority having jurisdiction over environmental clean-up of the Property as a result, whether directly or indirectly, of Lessee's or Lessee's employees, agents, contractors or affiliates actions on the Property either during the Term, any renewal or extension thereof, decommissioning or the restoration period, Lessee shall indemnify and hold Landlord harmless against any and all such notices, orders, expenses or costs incurred as a result thereof; this provision shall survive the termination of this Agreement and restoration period.

[Signature page to follow]

IN WITNESS WHEREOF, the parties have executed this Solar Generating Facility Land Option and Lease and Easement Agreement, affecting the Property, on the day and year first above written.

LANDLORD:

LESSEE:

By: Jonathan M. Hagan
Jonathan M. Hagan
BY: Sabrina A. Hagan
Sabrina A. Hagan

FRON Bn LLC
a Delaware Limited Liability Company

By: Martin Hermann
Name: Martin Hermann

STATE OF KENTUCKY
COUNTY OF WASHINGTON

I hereby certify that on this 25th day of August, 2022, Jonathan Hagan and Sabrina Hagan, his wife, appeared before me and signed, acknowledged and swore that they executed this Land Option and Lease and Easement Agreement as their free act and deed and that they are known to me, or if not known to me, presented satisfactory evidence to me that they are the persons described in and who executed this instrument.

My commission expires: 4-23-2025.



Michael W. McCain, Jr.
NOTARY PUBLIC, Ky State at Large
PRINT NAME: Michael W. McCain, Jr.
NOTARY ID NUMBER: KYNP28087

STATE OF Florida
COUNTY OF Okaloosa

I hereby certify that on this 25th day of January, 2023, Martin Hermann, Member of FRON Bn LLC, a Delaware Limited Liability Company, appeared before me and signed, acknowledged and swore that they executed this certification of consideration as their free act and deed and that they are known to me, or if not known to me, presented satisfactory evidence to me that they are the persons described in and who executed this instrument.

My commission expires: 01/08/2027.



Arstein Reyes
NOTARY PUBLIC,
PRINT NAME: Arstein Reyes
NOTARY ID NUMBER: 1745139

EXHIBIT A

Property Description

Washington County, Kentucky

County Parcel Number 13-008

A CERTAIN TRACT OR PARCEL OF LAND located .4 miles south of Jackson Branch Road on Joe Blandford Farm Road in Springfield, Washington County, Kentucky, and being more particularly described as follows:

BEGINNING at a point on the centerline of M. Blandford Road and north side of concrete cattle guard at midpoint, in the fenced line of Warren. Thence leaving the centerline and with the fenced line of Warren, N 87-17-54E 36.94 feet to a post; S 85-45-00 E 437.12 feet to a post; S 87-10-49 E 402.70 feet to a corner post; S 14-09-23 E 498.40 feet to a post and new corner to the remaining land of Joe M. Blandford. Thence leaving Warren and with a new line, N 87-49-23 W 1039.55 feet to set corner spike on the centerline of Blandford farm road. Thence with said farm road centerline, N 03-07-53 E 446.28 feet to a spike, and N 19-47-34 E 51.68 feet to the beginning. Containing 10.7598 acres by survey of Reed Spaulding, III, LS, dated 9/16/1993.

Being the real estate conveyed to Jonathan Michael Hagan by Deed Book 352, Page 111, filed in the Register of Deeds Office of Washington County, KY.

County Parcel Number 13-009

A tract of land lying in Washington County, KY 5.2 miles southwest of Springfield on the waters of Cartwright's Creek and once known as the Lucas Moore farm heretofore being composed of two tracts hereby combined into one tract in the following description:

BEGINNING at a fence, corner to Charlie Spalding and Herman Warren; thence along Warren's line, South 14 degrees east 497.5 feet to a fence corner; thence along Warren's line and Cecil Moraja, south 69 ½ degrees east 689 feet to a fence corner; thence along Moraja's line and the line of Jude Kidwell, south 7 degrees west 1439 feet to a corner to Kidwell; thence along Kidwell south 28 degrees west 464 feet to a corner to Tom Mackin; thence along said Mackin and Joe Spalding, north 84 degrees west 2540 feet to a walnut, corner to Joe Spalding; thence along Joe Spalding's line, north 18 degrees east 109 feet; north 7 degrees west 124 feet; north 25 degrees west 64 feet and north 4 degrees east 2028 feet along Joe Spalding and the line of Mrs. Emmett Spalding to a fence, corner to Charlie Spalding; thence south 89 degrees east 2030 feet along Charlie Spalding's line, to the beginning, and containing 145.5 acres, more or less.

LESS AND EXCEPTED FROM THE ABOVE BOUNDARY and not conveyed hereby is a certain lot previously conveyed to Joseph Jude Hagan and Debbie Hagan, his wife, by deed dated December 30, 1993, by Joseph M. Blanford and Linda Blanford, his wife, of record in the Clerk's Office of the Washington County Court in Deed Book 230, Page 170, and more particularly described as follows:

A CERTAIN TRACT OR PARCEL OF LAND located .4 miles south of Jackson Branch Road on Joe Blanford Farm Road in Springfield, Washington County, Kentucky, and being more particularly described as follows:

BEGINNING at a point on the centerline of M. Blanford Road and north side of concrete cattle guard at midpoint, in the fenced line of Warren. Thence leaving the centerline and with the fenced line of Warren, N 87-17-54 E 36.94 feet to a post; S 85-45-00 E 437.12 feet to a post; S 87-10-49 E 402.70 feet to a corner post; S 14-09-23 E 498.40 feet to a post and new corner to the remaining land of Joe M. Blanford. Thence leaving Warren and with a new line, N 87-49-23 W 1039.55 feet to a set corner spike on the centerline of Blanford farm road. Thence with said farm road centerline, N 03-07-53 E 446.28 feet to a spike, and N 19-47-34 E 51.68 feet to the beginning. Containing 10.7598 acres by survey of Reed Spaulding III, L.S., dated 9/16/1993.

ALSO LESS AND EXCEPTED FROM THE ABOVE BOUNDARY and not conveyed hereby is a certain lot previously conveyed to Austin G. Spalding and Karen M. Spalding, his wife, by deed dated January 22, 2002, by Joseph M. Blanford and Linda A. Blanford, his wife, of record in the Clerk's Office of the Washington County Court in Deed Book 275, Page 327, and more particularly described as follows:

A LARGE AGRICULTURE TRACT located at the end of Jackson Branch Road, 5.2 miles southwest of Springfield, Washington County, Kentucky, and more particularly described as follows:

FROM the end of Jackson Branch Road at a concrete cattle guard in the fenced line between Blanford and Jon P. Warren & Jeanine Warren, D.B. 127, P. 163, proceed due west along the fenced line approximately 1150 ft., to the fenced line of Joseph Larry Spalding, D.B. 183, P. 282; Thence, with the fenced line of Spalding, S 04°W approximately 493 ft. to an iron pin, set this survey at the intersection of an old tract fence of Blanford, for a Point of beginning. Thence, leaving the line of Joseph Larry Spalding, with new lines across Blanford, each call to an iron pin, set this survey, N 87°07'33"E.; along the old tract fence, 307.27 ft.; S 64°40'53" E 363.76 ft.; S 64°24'49"E 305.30 ft.; S 11°04'57"W 228.62 ft.; S 06°00'29"W 312.64 ft. to a point below a pond; S 86°47'00"E 439.09 ft.; S 87°53'48"E 436.59 ft., crossing a broad ridge; N 00°34'38"W 213.31 ft.; N 64°10'42"E 493.45 ft.; N 59°50'45"E 528.21 ft. to a point in the line of J.C. Moraja, D.B. 224, P. 275 ft. at the base of an 18-inch hickory; Thence, with the fenced line of Moraja, S 74°32'06"E 265.69 ft. to an iron pin (set) at a corner fence post in a hollow drain leading to Cartwright Creek; Continuing with the fenced line up the hollow drain, S 07°45'34"W 1,050.24 ft. to an iron pin (set) at a corner with David Jerome Mattingly, D.B. 215, P. 057; Thence, leaving Moraja, with the fenced line of Mattingly, S 08°25'22"W 391.10 ft. to an iron pin (set); S 29°48'12" W 464.19 ft. to an iron pin (set) at the intersection of two fence lines; N 86°17'39" W 24.87 ft. to an iron pin (set) against an old fence post at a corner with Mackin Farms, Inc., D.B. 216, P. 720; Thence leaving Mattingly, with the fenced lines of Mackin, N 84°37'43"W 989.14 ft., to an iron pin (set) at a cross fence of Mackin; N 85°07'01"W 1,000.73 ft. to an iron pin (set) at a corner with Joseph Earl Spalding and Mary Generose Spalding, D.B. III, P. 360; Thence, leaving Mackin with the fenced lines of Spalding N 83°36'38"W 530.51 ft. to an iron pin (set) at the base of a 24-inch walnut near Jackson Branch of Cartwright Creek and near the Washington County-Marion County line; Thence, continuing with the fenced lines of Spalding, down Jackson Branch, N 17°53'12'E 109.14 ft. to an iron pin (set) in the Branch; N 09°36'24"W 124.29 ft. to an iron pin (set) on the bank of the Branch; N 21°04'57"W 62.97 ft. to an iron pin (set); N 04°05'42"E (passing

the corner of Joseph Earl Spalding and Mary Generose Spalding with Joseph Larry Spalding, D.B. 183, P. 282 at 1521.85 ft.) for a total distance of 1,535.83 ft. to the beginning, containing 98.338 acres per survey performed December 28, 29, 2001, by L.S. Hardin, Licensed Professional Land Surveyor No. 527.

Being the real estate conveyed to Jonathan Michael Hagan by Deed Book 352, Page 106, filed in the Register of Deeds Office of Washington County, KY.

LESS AND EXCEPT that portion depicted herein by Landlord which is excluded from this agreement. No legal description exists at present date for said Landlord exclusion; however, said Landlord exclusion will be surveyed at a later date per the rights granted within this agreement.

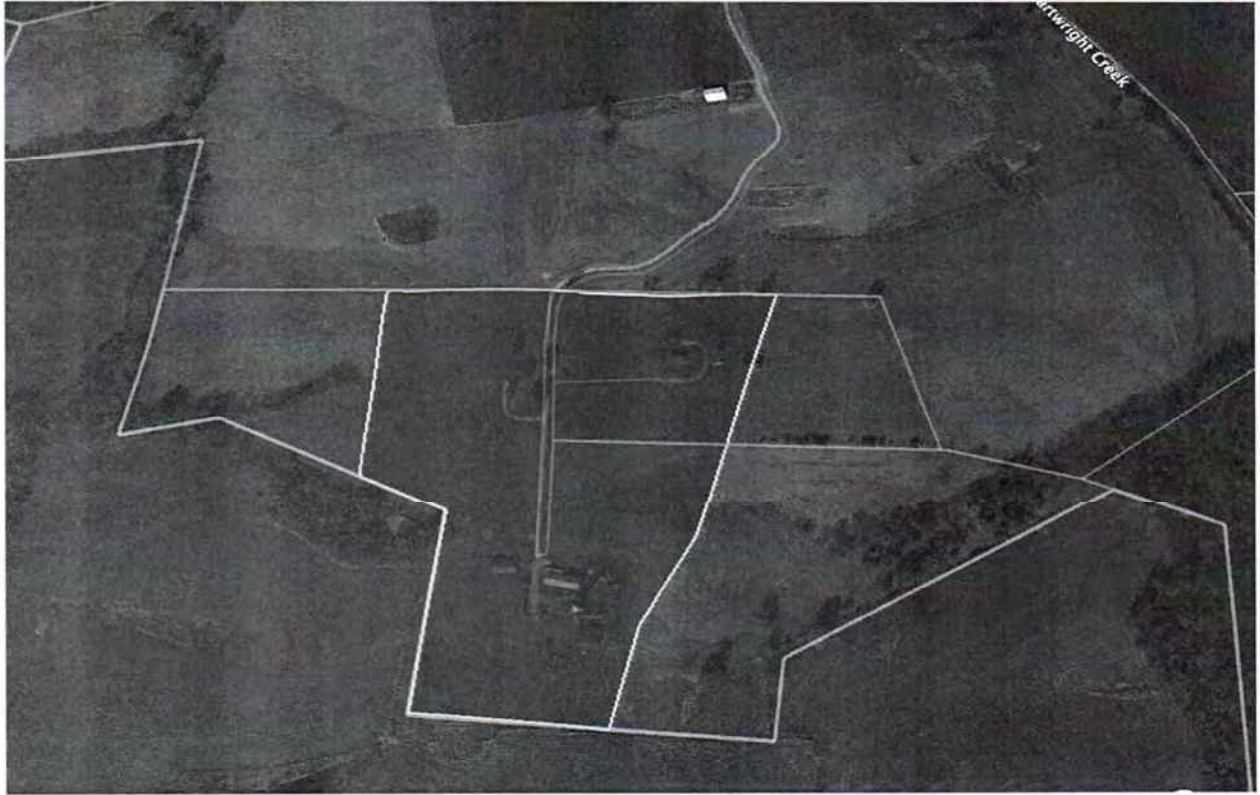
Containing 24.5 acres, more or less

**Exhibit A
Property**

Description of Property

Parcel #	County	Legal Description	Acreage
13-009 and 13-008	Washington	See attached "Exhibit A continued" for further description of property.	46.99
TOTAL PROPERTY:			46.99
EXCEPTED PROPERTY:			22.49
TOTAL LEASED:			24.5

**Exhibit A-1
Do Not Disturb Area**



**Exhibit B
Mineral Holdouts**


**Exhibit C
Leases**

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COVER PAGE TO OPTION AND LAND LEASE

Lessor	Matthew Lyle Johnson
Lessee	FRON bn, LLC, a Delaware limited liability company
Premises	Certain real property located in Washington County in the Commonwealth of Kentucky, more particularly described in the attached <u>Exhibit A</u> ("Premises")
Option Period End Date	[REDACTED]
Option Rent	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] <p>The Option Rent shall also include payment for the excepted acreage described in <u>Exhibit A</u> being Tract One (5.59) acres of the Minor Plat for Matt Johnson, as shown on plat of same of record in Plat Cabinet C, Slide 291, containing a total of 178.76 acres, more or less.</p> [REDACTED] [REDACTED]
Extended Term	The Extended Term of the lease shall continue for [REDACTED] after the Extended Term Date unless terminated sooner in accordance with the terms of the lease.
Renewal Term	The Lessee shall have the right to extend the Extended Term [REDACTED] by providing written notice of such extension to Lessor.
Annual Rent	[REDACTED] <p>The Annual Rent shall be payable in quarterly installments equal to one-fourth of the Annual Rent ("Quarterly Rent"), [REDACTED]</p> [REDACTED] <p>Annual Rent shall escalate [REDACTED]</p> [REDACTED]
Signing Bonus	[REDACTED] [REDACTED] [REDACTED] [REDACTED]

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Addresses for Notice	<u>If to Lessor:</u> Matthew Lyle Johnson 230 East Grundy Avenue Springfield, KY 40069  <u>If to Lessee:</u> BrightNight, LLC 13123 E Emerald Coast Pkwy Suite B #158 Inlet Beach, FL 32461 Attn: Legal Email: legal@brightnightpower.com
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OPTION AND LAND LEASE

This Option and Land Lease ("**Agreement**") is made as of the latest date of signature below ("**Effective Date**") between Lessor, and Lessee. Lessor and Lessee are referred to individually herein as "**Party**" and are collectively referred to as "**Parties**".

For good and valuable consideration, the receipt of which is hereby acknowledged, Lessor and Lessee agree as follows:

RECITALS

- A. Lessor is the owner of the Premises.
- B. Lessee is exploring the possibility of developing, owning, and operating a commercial solar energy facility, energy storage facility, and/or other renewable energy facilities ("**Project**").
- C. Lessee desires to obtain an option to lease and obtain certain easements on the Premises for the purposes of investigating the suitability of the Project on the Premises and, if such option is exercised, to then lease and obtain certain easements for developing, constructing, and operating the Project.
- D. Lessor desires to grant Lessee an option to lease the Premises and, upon Lessee's election to lease, to grant Lessee the right to lease and obtain certain easements on the Premises on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties included in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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ARTICLE I. Premises

Section 1.1 General

(a) Grant of Option and Lease. Lessor hereby grants to Lessee and Lessee accepts from Lessor an exclusive option to lease the Premises for the purposes of testing and evaluating the Premises for solar energy generation, energy storage, and/or other renewable-energy-related facilities feasibility (“**Option**”). Upon Lessee’s exercise of the Option, and its election to lease the Premises in accordance with Section 2.1(b), Lessor hereby leases the Premises to Lessee and Lessee hereby leases the Premises from Lessor for the purposes of constructing, installing, operating, maintaining, replacing, relocating and removing from time to time the following facilities, collectively “**Facilities**”:

(i) meteorological and solar measuring equipment, solar panels, inverters, racking, tracking, foundations and concrete pads, support structures, footing, anchors, fences, storage facilities, batteries, other renewable energy facilities, other equipment that collects, converts, transmits, contains, or stores energy, and related fixtures and facilities;

(ii) operations and maintenance buildings, security buildings or structures, staging areas for assembly of equipment, control buildings, laydown areas, parking areas, crane pads, fences, roads and related structures and facilities;

(iii) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures and/or underground (at Lessee’s sole discretion), and one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility or third-party transmission system; and

(iv) any other improvements, facilities, machinery and equipment that Lessee reasonably determines are necessary, useful or appropriate for solar energy, energy storage and/or other renewable energy generation purposes.

(b) Purpose of Agreement. This Agreement is solely and exclusively for solar energy and/or energy storage purposes, and throughout the term of the Agreement, Lessee shall have the sole and exclusive rights to use the Premises for energy purposes and to convert and store energy resources on the Premises. For purposes of this Agreement, “energy purposes” means: solar resource evaluation, solar energy development, converting solar energy into electrical energy, collecting, storing and transmitting electrical energy, and any and all other activities related to the preceding including for compliance with commonwealth or local laws.

(c) Option Period Activities. During the Option Period (defined below), Lessor and Lessee may undertake the following activities:

(i) Lessee, its contractors or agents, may enter on to the Premises for the purposes of extracting soil samples, performing geotechnical tests, performing environmental assessments, surveying the Premises, gathering data, and conducting such other tests, studies, inspections and analyses on the Premises as Lessee deems necessary, useful or appropriate.

(ii) Within sixty (60) calendar days after the Effective Date or, if obtained after the Effective Date, no later than sixty (60) calendar days after the date obtained, Lessor shall

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deliver to Lessee copies of any and all contracts, documents, reports, studies, surveys, and other agreements prepared for Lessor or within Lessor's possession or control relating to or affecting the Premises, including, but not limited to, owner's policies of title insurance, land surveys, environmental surveys and assessments, and appraisals.

(iii) Lessor or its farm tenant ("**Farmer**") may engage in crop farming on portions of the Premises so long as such farming is terminable upon [REDACTED] notice and does not interfere with Lessee's ability to investigate and inspect the Premises nor interfere with Lessee's ability to exercise its Option. Upon Lessee's exercise of the Option, Lessee will use commercially reasonable efforts to allow Lessor or Farmer to harvest the crop before the Extended Term commences. [REDACTED]

(d) Easements. In addition to and in connection with the leasehold interest granted in accordance with Section 1.1(a), upon Lessee's exercise of the Option to lease the Premises, Lessor hereby grants and conveys to Lessee and its successors and assigns the following easements on, above, over, under, through and across the Premises:

(i) an exclusive easement to the free and unobstructed collection of solar energy over the entirety of the horizontal space and the entirety of the vertical air space lying above the Premises prohibiting any obstruction to the open and unobstructed access to the sun (together with the preceding sentence, the "**Solar Easement**") throughout the entire Premises to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where any solar Facility is or may be located at any time from time to time (each such point referred to as a "**Site**") and for a distance from each Site to the boundaries of the Premises, together vertically through all space located above the surface of the Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Premises through each Site to each point and on and along such line to the opposite exterior boundary of the Premises. Lessor may not place, plant or retain any trees, structures or improvements on the Premises which may, in Lessee's sole judgment, impede or interfere with the collection and conversion of solar energy, unless Lessor has received prior written approval from Lessee for any such trees, structure or improvement. Lessor may submit a letter of request to Lessee, and approval or denial of such request shall be in Lessee's sole discretion.

(ii) an easement for ingress to and egress from the Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of existing roads and lanes, or otherwise by such route or routes as Lessee may construct from time to time ("**Access Easement**"). The Access Easement shall include the right to improve existing roads and lanes, or to build new roads, shall run with and bind the Premises, and shall inure to the benefit of and be binding upon Lessor and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

(iii) If Lessee wishes to obtain from Lessor one or more easements on, over, across, along and/or above any real property owned by Lessor and adjacent to the Premises but not included in the Premises or the Project (each, an "**Additional Easement**") in

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connection with, for the benefit of, and for purposes incidental to the Project, including for (i) ingress and egress to the Premises, (ii) installation and maintenance of above-ground or overhead transmission or communication lines and facilities, or (iii) installation and maintenance of other structures or facilities related to the Project, then upon request Lessor shall grant to Lessee such easement in such location or locations as Lessee may reasonably request and the area covered by such Additional Easement shall become part of the Premises and the Project and shall be included in the acreage calculation for payment of Annual Rent. Lessee shall have the right to amend any memorandum of this Agreement to reflect such addition.

(e) Lessor Activities. Lessor retains all rights to use that portion of the Premises outside of any security fencing that is not occupied by Facilities to the extent such use does not interfere with the Facilities or Lessee's activities on the Premises. Lessor shall be entitled to use any private road constructed by Lessee on the Premises for access to the balance of the Premises.

ARTICLE II. Lease Term

Section 2.1 Option Period; Extended Term; Renewal Term

(a) Option Period. The "Option Period" commences on the Effective Date and expires on the Option Period End Date.

(b) Extended Term. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] ("Extended Term Date"). Lessee may exercise the Option for all or a portion of the Premises, and shall include such information in the Option Notice. If Lessee exercises the Option for less than the entire Premises, [REDACTED]
[REDACTED]

If Lessee elects to exercise the Option for less than the entire Premises, the legal description of that portion of the Premises to be leased will replace the legal description on Exhibit A of this Agreement without the need for an amendment, if allowable by commonwealth law and county requirements, and Lessee may record a notice of the Extended Term Date and the legal description of that portion of the Premises that Lessee has elected to lease in the public records of the county in which the Premises is located. If Lessee elects to exercise the Option for less than the entire Premises, then following the Extended Term Date, the term Premises, as used in this Agreement shall mean the legal description and acreage of the property for which Lessee elected to exercise the Option. The Extended Term of the Agreement is as set forth on the Cover Page ("**Extended Term**").

(c) Renewal Term. Lessee shall have the right, at its option, to extend the Extended Term as set forth on the Cover Page (each, a "**Renewal Term**"). To exercise its option to renew the term of this Agreement for a Renewal Term, Lessee must deliver a written extension notice to Lessor [REDACTED], *provided, however,* that if Lessee fails to give notice of the exercise of any option to extend, such option shall not lapse unless Lessor gives Lessee written notice requesting that Lessee either exercise or forfeit such option and Lessee, in writing, forfeits such option. The terms of the Agreement during each Renewal

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Term shall be the same terms and conditions applicable during the Extended Term, except as specifically provided herein. Lessee shall have no right to extend the term of this Agreement beyond the last Renewal Term provided for in this Section 2.1(c) absent further mutual agreement.

Section 2.2 Termination of Lease and Release of Property

(a) The occurrence of any of the following events shall terminate this Agreement:

(i) The expiration of this Agreement as set forth in Section 2.1; or

(ii) The written agreement of the Parties to terminate this Agreement; or

(iii) [REDACTED] the election of Lessor to terminate this Agreement pursuant to and in accordance with Article IX; or

(iv) Lessee's execution and delivery of written notice of termination to Lessor, in Lessee's sole and absolute discretion and, if applicable, the decommissioning and removal of the Facilities in accordance with Section 4.3; or

(v) Lessee's failure to deliver the Option Notice prior to the expiration of the Option Period.

(b) At any time during the Option Period, the Extended Term, and any Renewal Term, Lessee may release a portion of the Premises in its sole and absolute discretion by providing notice to Lessor and recording a release of lease in the public records for the applicable portion of the Premises without the need for an amendment. In the event of such partial release, Lessee shall decommission and remove any Facilities on such portion of the Premises subject to release in accordance with Section 4.3. Lessee's obligation to pay any amounts applicable to the released property, including Option Rent (as defined below) or Annual Rent (as defined below), as applicable shall terminate as of the date of such release.

ARTICLE III. Payments and Taxes

Section 3.1 Option Period Rent

During the Option Period, Lessee shall pay Lessor an annual payment equal to the Option Rent, paid in equal quarterly installments in advance, and measured by the total number of acres within the Premises, prorated for any partial acres within the Premises; *provided*, that the first payment of Option Rent will be made as set forth on the Cover Page, except that in the event the Agreement is terminated in accordance with the terms of this Agreement prior to such date, Lessee shall not be obligated to make such Option Rent payment. Thereafter, each quarterly payment of Option Rent shall be made on or before the date that is [REDACTED] the Effective Date and on or before each [REDACTED] thereafter and expiring on the earlier to occur of: (i) the Extended Term Date or (ii) the Option Period End Date. For purposes of calculating the amount of the Option Rent, the Premises are stipulated to be the number of acres set forth in Exhibit A. If the option is exercised, the Option Rent paid by Lessee to Lessor shall be *pro-rated* for the current quarter and any excess Option Rent paid shall be applied against the Annual Rent. Lessee, at its sole and absolute discretion,

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shall have the right to terminate this Agreement or to release any portion of the Premises at any time during the Option Period.

Section 3.2 Annual Rent

The Annual Rent during the Extended Term and any Renewal Term shall be paid as follows:

(a) Beginning on the first day of the Extended Term, Lessee shall pay Lessor an annual rent equal to the Annual Rent as set forth on the Cover Page payable quarterly in advance, *provided* that the first quarterly payment of Annual Rent shall be reduced by any applied portion of the Option Rent paid for the current Quarter. Thereafter, payment of Quarterly Rent will be made [REDACTED]

Beginning on the first anniversary of the Extended Term, and every anniversary thereafter, the Extended Term or the Renewal Term, Annual Rent shall escalate as set forth on the Cover Page.

Section 3.3 Taxes, Assessments and Utilities

(a) Lessee shall pay, when due during the Extended Term and any Renewal Term, [REDACTED]

(b) Either Party may contest the validity or amount of any levied taxes, assessments or other charges for which each is responsible under this Agreement as long as such contest is pursued in good faith and with due diligence and the Party contesting the tax, assessment or charge has paid the obligation in question or established adequate reserves to pay the obligation in the event of an adverse determination.

(c) [REDACTED]

Section 3.4 Payment Forms

Notwithstanding anything in this Agreement to the contrary, Lessee shall have no obligation to make any payment to Lessor otherwise required under this Agreement until Lessor has returned to Lessee a completed Internal Revenue Service Form W-9, such W-9 form to either (i) have been provided by Lessee to Lessor prior to execution of this Agreement or (ii) be provided by Lessee to Lessor promptly upon execution of this Agreement. Lessee's failure to provide a form W-9 shall not discharge the requirement that Lessor provide a Form W-9 prior to receiving payment.

Section 3.5 Signing Bonus

As additional consideration for all rights granted herein, if Lessor executes this Agreement, Lessee shall pay to Lessor a one-time, nonrefundable payment as set forth on the Cover Page.

ARTICLE IV. Lessee's Covenants

Lessee covenants, represents and warrants to Lessor as follows:

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Section 4.1 Liens

Lessee shall keep the Premises free and clear of all mechanics' liens for labor, materials, services, supplies and equipment performed on or furnished to Lessee or any Facility on the Premises in connection with Lessee's use of the Premises. Lessee may contest any such lien, whether filed against Lessor's interest in the Premises or Lessee's leasehold interest, but shall post a bond or use other available means to remove any lien that is created during the contested proceeding before such lien is foreclosed. If Lessee decides not to contest such lien, Lessee agrees to otherwise remove such mechanic's lien that is caused by Lessee's use of the Premises within sixty (60) calendar days of receiving notice of such lien, and in any event prior to the enforcement thereof, in accordance with Ky. Rev. Stat. §§ 376.010, et seq.

Section 4.2 Permits and Laws

Lessee and its designees shall at all times comply with all federal, commonwealth and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Lessee's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Lessor where appropriate or required, the validity or applicability to the Premises or Facilities of any law, ordinance, statute, order, regulation or the like now or hereafter made or issued by any federal, commonwealth, county, local or other governmental agency or entity. Lessor shall cooperate in every reasonable way in such contest, provided Lessee reimburses Lessor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order or regulation.

Section 4.3 Lessee's Improvements and Remediation

(a) All Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement shall be the sole property of Lessee, and Lessor shall have no ownership or other interest in any Facilities on the Premises. The Facilities are and shall remain personal property of the Lessee, notwithstanding any present or future common ownership of the Facilities and the Premises. Throughout the term, Lessee shall, at its sole cost and expense, maintain Lessee's Facilities in good condition and repair, ordinary wear and tear excepted. All Facilities constructed, installed or placed on the Premises by Lessee pursuant to this Agreement may be moved, replaced, repaired or refurbished by Lessee at any time.

(b) Upon the expiration or termination of this Agreement, Lessee shall remove the Facilities, including all concrete mountings and foundations, if any, to a depth of three feet below surface grade, within twelve (12) months from the date the Agreement expires or terminates and restore the Premises to as close to pre-construction conditions as reasonably practical.

(c) If the local jurisdiction in which the Facilities are located does not require either a deposit of money or a bond or guarantee relating to the decommissioning of the Facilities and restoration of the Premises ("**Decommissioning Security**"), then at the fifteenth (15th) year of the Extended Term, Lessee shall provide Lessor with Decommissioning Security in an amount equal to

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the estimated costs to decommission the Facilities for the entire Project and restore the Premises in the manner and to the extent described above, discounted to present value at the time at a market-based discount rate, net of any estimated salvage value, as determined by a commonwealth-registered independent engineer designated by the Lessee. The Decommissioning Security provided by Lessee pursuant to this Section 4.3 may take the form of one or more, or any combination of the following: corporate security bonds, self-bonds, collateral bonds, letters of credit, parent company guarantees, cash escrows or any other form of security reasonably acceptable to Lessor and Lessee. Lessee agrees that a pro-rata portion of the Decommissioning Security shall be held and maintained for the benefit of Lessor to secure Lessee's obligation to remove equipment and restore the Premises as provided in this Section 4.3. The amount of Decommissioning Security shall be reevaluated and adjusted every five years thereafter and shall remain in effect until two (2) years after the date this Agreement expires or terminates, unless (i) the Decommissioning Security is fully drawn upon earlier by Lessor in accordance with its terms, (ii) Lessor provides Lessee with a written notice authorizing the release of the Decommissioning Security or (iii) Lessee has completed its decommissioning obligations under this Agreement. The obligations of this Section 4.3 shall survive the expiration or earlier termination of this Agreement.

(d) To the extent commercially reasonable and in accordance with all applicable laws, Lessee shall bury underground electrical cables and collector lines.

Section 4.4 Hazardous Materials

Lessee shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessee's operations, any substance which is defined as a "hazardous material", "toxic substance" or "solid waste" in any federal, commonwealth or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessor and is in full compliance with all applicable laws. Lessee shall consult with Lessor and provide copies of any notices, claims or other correspondence from any governmental authority regarding hazardous waste issues affecting the Premises. Lessee shall indemnify and hold Lessor harmless from and against any claims related to the disposal, release, or storage of hazardous materials on the Premises by Lessee, except that, Lessee shall not be liable for any pre-existing conditions on the Premises in existence prior to Lessee's activities on the Premises.

Section 4.5 Insurance

(a) Prior to entry onto the Premises, Lessee shall obtain and maintain the following insurance covering the Facilities and Lessee's activities on the Premises at all times during the term.

(i) Commercial General Liability insurance with coverage of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate.

(ii) Commercial Automobile Liability insurance with coverage of at least one million dollars (\$1,000,000) per occurrence.

Such insurance coverage for the Facilities and Premises may be provided as part of a blanket policy that covers other facilities or properties as well. A combination of primary and umbrella/excess policies may be used to satisfy limit requirements.

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(b) Policy Provisions; Additional Insured. All insurance policies provided hereunder shall (i) be written on an occurrence basis, and (ii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to Lessor. Lessee agrees to endeavor to provide not less than ten (10) days' notice before insurance is terminated or otherwise cancelled. Lessee's policies shall contain a clause making them primary and non-contributory and provide the Lessor with Additional Insured status solely with respect to Lessee's activities on the Premises.

(c) Certificates. Upon Lessor's request Lessee shall deliver to Lessor certificates of insurance evidencing the above-required coverage. Lessor's failure to request, review or accept such certificate shall in no way limit or relieve Lessee of the duties and responsibilities to maintain insurance as set forth in this Agreement.

ARTICLE V. Lessor Covenants

Lessor covenants, represents and warrants to Lessee as follows:

Section 5.1 Title and Authority

Except to the extent otherwise stated in this Agreement, Lessor is the sole owner of the Premises in fee simple and each person or entity signing the Agreement on behalf of Lessor has the full and unrestricted authority to execute and deliver this Agreement and to grant the Option, leasehold interest, easements and other rights granted herein. All persons having any ownership interest in the Premises (including spouses) are signing this Agreement as Lessor. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms. Other than as disclosed to Lessee prior to execution of this Agreement, and other than those encumbrances that are reasonably likely to be revealed on a commitment for title insurance, there are no encumbrances, liens or other title defects against the Premises. Lessor shall reasonably cooperate with Lessee, at no out-of-pocket cost to Lessor, in curing any title defects discovered by Lessee. There are no farm leases or other tenancies affecting the Premises except those disclosed by Lessee to Lessor in writing prior to or at the time of execution of this Agreement.

Section 5.2 Quiet Enjoyment; Exclusivity; Certain Permitted Activities of Lessor

(a) Quiet Enjoyment. As long as Lessee is not in default under this Agreement, Lessee shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Lessor or any person claiming through Lessor. Lessor and its activities on the Premises and any grant of rights Lessor makes to any other person shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere with any of Lessee's activities pursuant to this Agreement, and Lessor shall not interfere or allow interference with solar energy above, on, and over the Premises or otherwise engage in activities which might impede or decrease the output or efficiency of the Facilities. Facilities located on the Premises from time to time may be operated in conjunction with Facilities operated on other nearby properties that are part of the same Project, as determined by Lessee. In no event during the term of this Agreement shall Lessor construct, build or locate or allow others to construct, build or locate any energy system, or similar project on the Premises.

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(b) Hunting. During the Extended Term and any Renewal Term, Lessor shall not hunt on the Premises, nor shall Lessor permit any other person or invitee to hunt on the Premises.

Section 5.3 Hazardous Materials

Lessor shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Lessor's operations, any substance which is defined as a "hazardous substance", "hazardous material", to "solid waste" in any federal, commonwealth or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Lessee and is in full compliance with all applicable laws. Lessor represents to Lessee that Lessor has no knowledge of any condition on the Premises that is in violation of such laws, statutes or ordinances, and that it will indemnify and hold Lessee harmless from and against any claims related to any pre-existing conditions affecting the Premises.

Section 5.4 Cooperation; Further Assurances

(a) Lessor shall cooperate with Lessee and use Lessor's best efforts to obtain such non-disturbance and subordination agreements as may be requested by Lessee from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Lessor's fee title to the Premises, to the extent necessary to eliminate any actual or potential interference by the holder with any rights granted to Lessee under this Agreement.

(b) Lessor shall also support and cooperate with, and shall not directly or indirectly impair, oppose or obstruct, the efforts of Lessee to obtain and maintain any permits and third-party easements and other land rights needed for the Facilities and the Project. In connection with the issuance of such permits, and to the extent allowed by (and subject to) applicable law, Lessor hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the county in which the Premises are located or in any governmental entitlement or permit hereafter issued to Lessee, with respect to the locations of any Facilities to be installed or constructed on the Premises or on adjacent properties that are a part of the Project. If required by local governmental entity, Lessor hereby appoints Lessee as Lessor's agent for the sole purpose of preparing, executing, applying for, submitting and/or prosecuting in Lessor's name, any and all approvals on behalf of Lessor.

(c) Lessor shall also provide Lessee with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Lessee or any of its lenders or investors.

Section 5.5 Estoppel Certificates

Within fifteen (15) days of receipt of a request from Lessee or from any existing or proposed Lender (defined below), Lessor shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Lessor's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee and any existing or proposed Lender, investor, title company and purchaser. The failure of Lessor to deliver such

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statement within such time shall be conclusive evidence upon Lessor that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Agreement.

Section 5.6 Mineral Rights

(a) Lessor retains and reserves all subsurface oil, gas, coal, and other minerals in, on, under or that may be produced from the Premises, subject to the surface rights waiver included in this provision (collectively, "**Mineral Rights**").

(i) To the best of Lessor's knowledge, Lessor is the sole owner of the Mineral Rights and Lessor holds good, indefeasible and insurable title to the Mineral Rights and there are no leases or other agreements in effect with respect to the Mineral Rights except as set forth on the attached Exhibit B.

(ii) Lessor hereby expressly releases and waives, on behalf of itself and its successors and assigns (and agrees that all future owners and lessees of any rights, title, or interest in or to the Mineral Rights reserved by Lessor or other mineral rights underlying the Premises, shall be subject to and burdened by the following waiver of rights and automatically be deemed to include a contractual waiver by the lessee or grantee, as applicable), all rights of ingress and egress to enter upon the surface of the Premises and the area located between the surface and 500 feet beneath the surface of the Premises for purposes of exploring for, developing, drilling, producing, transporting, or any other purposes incident to the development or production of oil, gas, or other minerals. The foregoing provision shall be a covenant running with the land binding upon any party owning any interest in, or rights to develop or use the Mineral Rights reserved by Lessor.

(iii) To the extent Lessor, its predecessor, or any other holder of Mineral Rights has leased the Mineral Rights and such lease(s) are still in effect, Lessor shall cooperate with Lessee in obtaining a surface rights waiver agreement from such Mineral Rights lessee, accommodation agreements from any operators, affidavits of non-production, or other curative documentation.

Section 5.7 Right of First Refusal

In the event of any offer acceptable to Lessor, or to Lessor's successor in interest, at any time during the Extended Term, for the sale of the Premises ("Sale Offer"), Lessor, prior to the acceptance thereof, shall give Lessee, with respect to such Sale Offer, written notice thereof and a copy of said Sale Offer including the name and address of the proposed purchaser, and Lessee shall have the option and right of first refusal for sixty (60) days after receipt of such notice within which to elect to purchase the Premises on the terms of said Sale Offer. If Lessee shall elect to purchase the Site pursuant to the right of first refusal herein granted, it shall give notice of such election within such sixty (60)-day period. Lessee's failure at any time to exercise its option under this Section 5.7 shall not affect this Agreement and the continuance of Lessee's rights and options under this and any other section hereof.

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ARTICLE VI. Indemnification

Section 6.1 Indemnification

Each Party ("Indemnifying Party") agrees to defend, indemnify and hold harmless the other Party and the other Party's officers, directors, employees, representatives, mortgagees and agents (collectively, "Indemnified Party") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises (including, as to Lessor, any operations or activities conducted on the Premises by any person or entity other than Lessee prior to the Effective Date) or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. Reference to physical damage to property in the preceding sentence does not include losses of rent, business opportunities, profits and similar damage and in no event will it include consequential, indirect, punitive or similar damages. This indemnification shall survive the expiration or termination of this Agreement.

Section 6.2 Crop Damage

(a) Lessee shall pay Lessor crop damages for all crops that are removed or damaged as a direct result of Lessee's Option Period activities and/or Lessee's construction of Facilities on the Premises, in accordance with Section 1.1(c), as calculated below ("Crop Damages"). Crop Damages attributable to Lessee's Option Period activities will be paid within a reasonable period of time, [REDACTED] after such damage occurs. Crop Damages attributable to Lessee's construction of the Facilities will be paid one time after construction of the Facilities is complete.

Crop damages will be calculated by the following formula:

[REDACTED]

(i) [REDACTED]

(ii) [REDACTED]

(iii) [REDACTED]

(b) Lessor Records. Promptly after construction activities on the Premises, Lessee shall determine, in its reasonable discretion and using the calculation above, Crop Damages for the Premises and provide such calculation to Lessor. If Lessor believes that the Price, Yield or Amount of Damaged Acres is incorrect, Lessor may submit records and documentation ("Lessor Records") that Lessor believes accurately reflect the Amount of Damaged Acres and Yield. For purposes of the

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foregoing, "Lessor's Records" shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines, receipts showing price paid for the same crops in the most recent year and previous year if available. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the Parties cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent, at Lessee's sole cost and expense. Lessee shall remit payment for any Crop Damage to Lessor [REDACTED] following Lessee's receipt of the results of the impartial party's calculation.

ARTICLE VII. Assignment; Encumbrance of Lease

Section 7.1 Right to Encumber

(a) Lessee may at any time mortgage, hypothecate, grant or pledge all or any part of its interest in the Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement to any person or entity ("**Lender**") as security for the repayment of any indebtedness or the performance of any obligation ("**Mortgage**") without the consent of Lessor. Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Lessee's interests subject to the lien of Lender's Mortgage by foreclosure or otherwise assumes the obligations of Lessee directly.

(b) Lessor agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Lessee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent and cure a default under this Agreement and prevent any forfeiture of and restore any of Lessee's rights under this Agreement as if done by Lessee itself.

(c) During the time all or any part of Lessee's interests in the Agreement are Mortgaged or assigned to any Lender, if Lessee defaults under any of its obligations and Lessor is required to give Lessee notice of the default Lessor shall also be required to give Lender notice of the default, *provided, however*, that Lessor shall only be required to give notice to Lender if Lessee has given Lessor contact and notice information for the Lender. If Lessor becomes entitled to terminate this Agreement due to an uncured default by Lessee, Lessor will not terminate this Agreement unless it has first given written notice of the uncured default and of its intent to terminate this Agreement to the Lender and has given the Lender at least thirty (30) days to cure the default to prevent termination of this Agreement. If within such thirty (30)-day period the Lender notifies the Lessor that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Agreement in order to cure the default, Lessor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Lessee's interest under this Agreement and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Lessee. The time within which Lender must foreclose or acquire Lessee's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(d) The acquisition of all or any part of Lessee's interests in the Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Lessor nor constitute a breach or

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default of this Agreement by Lessee, and upon the completion of the acquisition or conveyance Lessor shall acknowledge and recognize Lender as Lessee's proper successor under this Agreement upon Lender's cure of any existing Lessee defaults and assumption of the obligations of Lessee under this Agreement prospectively.

(e) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Lessor agrees, upon request by any Lender within 60 days after the rejection or termination, to execute and deliver to Lessee or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Lessee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease Lessee, or Lender shall (A) pay Lessor any amounts which are due Lessor from Lessee, (B) pay Lessor any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease and (C) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Lessee under this Agreement to the extent Lessee failed to perform them prior to the execution and delivery of the new lease.

Section 7.2 Assignment

Lessee and any successor or assign of Lessee shall at all times have the right, without need for Lessor's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises for energy purposes: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Lessee's this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Premises or in any or all of the Facilities that Lessee or any other party may now or hereafter install on the Premises provided that (i) any such assignment, transfer or conveyance shall not be for a period beyond the term of this Agreement; (ii) the assignee or transferee shall be subject to all of the obligations, covenants and conditions applicable to the Lessee; and (iii) Lessee shall not be relieved from liability for any of its obligations under this Agreement by virtue of the assignment or conveyance unless Lessee assigns or conveys all of its interests under the Agreement to the assignee or transferee, in which event Lessee shall have no continuing liability. Upon any assignment or transfer of any or all of Lessee's interests hereunder, Lessee shall provide notice of such assignment or transfer to Lessor, together with contact information for the assignee or transferee (including name, address and phone number), but failure to provide such contact information shall not be considered a default hereunder.

Section 7.3 Continuing Nature of Obligations

(a) The easements and related rights granted by Lessor in this Agreement to Lessee are easements in gross for the benefit of Lessee, its successors and assigns, as owner of the rights created by the easements. The easements and other rights granted by Lessor in this Agreement are independent of any lands or estates or interest in lands, there is no other real property benefiting from the Solar Easement granted in this Agreement and, as between the Premises and other tracts of

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property on which Lessee may locate Facilities, no tract is considered dominant or servient as to the other.

(b) The burdens of the option, lease, and easements and all other rights granted to Lessee in this Agreement shall run with and against the land as to the Premises, shall be a charge and burden on the Premises, and shall be binding upon and enforceable against Lessor and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Lessor. This Agreement and the option, lease and easements granted herein shall inure to the benefit of Lessee and its successors, assigns, permittees, licensees and lessees.

ARTICLE VIII. Condemnation/Force Majeure

Section 8.1 Condemnation

If eminent domain proceedings are commenced against all or any portion of the Premises, and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Facilities on the Premises, the Parties shall either amend this Agreement to reflect any necessary relocation of the Facilities which will preserve the value and benefit of the Agreement to Lessee, together with any corresponding payments, or, at Lessee's option, this Agreement shall terminate in which event neither Party shall have any further obligations. If Lessee does not elect to amend or terminate the Agreement as set forth herein, the payments hereunder shall continue to be made up to the date of such condemnation.

Section 8.2 Proceeds

All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Lessor, except that Lessee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Facilities or the loss of any such Facilities or the use of the Premises pursuant to the Agreement. Lessee shall have the right to participate in any condemnation proceedings to this extent.

Section 8.3 Force Majeure

Neither Lessor nor Lessee shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a Force Majeure, which shall mean an event beyond the control of the Party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided; provided, that, such Party has promptly notified the other Party of such event, and uses commercially reasonable efforts to remedy such event.

ARTICLE IX. Default/Termination

Section 9.1 Events of Default

(a) Each of the following shall constitute an event of default:

- (i) [REDACTED]
- [REDACTED]
- [REDACTED]

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(ii) [REDACTED] (“Non-Monetary Default”).

(b) [REDACTED]

(c) [REDACTED]

Section 9.2 Surrender

Upon the termination or expiration of this Agreement, Lessee shall peaceably surrender the Premises to Lessor and remove all Facilities from the Premises at Lessee’s expense except as otherwise agreed upon by Lessor and Lessee in writing. Lessee shall have twelve (12) months from the date the Agreement expires or is terminated to remove the Facilities. For the period between the date of termination or expiration and the date upon which Lessee completes removal of the Facilities as required under Section 4.3 of this Agreement, Lessee shall pay to Lessor on a monthly basis [REDACTED]

Section 9.3 Specific Performance

Lessor acknowledges and agrees that should Lessor breach any of its obligations hereunder or otherwise fail to permit Lessee to exercise any of the rights and privileges granted herein, damages would be difficult to calculate and money damages would not be sufficient to compensate Lessee for such breach, and therefore, Lessor agrees that Lessee shall have the right to seek specific enforcement of this Agreement. In that event, Lessor agrees that Lessee has no adequate remedy at law, and that an order of specific performance may be granted in favor of Lessee. Nothing in this Section shall be construed as limiting Lessor’s right to pursue remedies available at law or equity.

ARTICLE X. Miscellaneous

Section 10.1 Notice

Notices, consents or other documents required or permitted by this Agreement shall be in a physical or electronic writing and shall be deemed given when personally delivered, or in lieu of personal delivery, after five days of the date deposited in the mail sent to the physical address noted below, by certified mail or similar service, or the next business day if sent by email or reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party.

Any notice shall be addressed to those physical or email addresses set forth on the Cover Page (or at such other addresses as either Party may designate upon written notice to the other Party in the manner provided in this paragraph):

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Section 10.2 Separate Agreements

Lessee may divide the Premises into two or more separate, stand-alone projects or phases of development if such division becomes, in Lessee's sole discretion, necessary to further the operations and/or the development of the Battery Facilities and a separate entity may be the lessee or grantee for each project or phase of development. If Lessee elects to divide the Premises into two or more projects or phases of development, Lessor shall, within 20 days after written request from Lessee, [REDACTED] bifurcate this Agreement by entering into and delivering to Lessee two (or the requested number of) stand-alone new agreements (which shall supersede and replace this Agreement) that provide Lessee with separate leasehold estates in different portions of the Premises, as designated by Lessee and with the necessary easement, subeasement or co-easement rights in the Premises (each, a "Bifurcated Agreement"). Any Bifurcated Agreement shall: (i) specify the portion(s) of the Premises to be covered by such Bifurcated Agreement (and the term "Premises", as used in such Bifurcated Agreement shall refer only to such portion(s)), (ii) contain the same terms and conditions as this Agreement (except for any requirements that have been fulfilled by Lessee, any assignee, or any other person or entity prior to the execution of such Bifurcated Agreements, and except for any modifications that may be required to ensure that Lessee's and Lessor's respective combined obligations under such Bifurcated Agreements do not exceed their respective obligations under this Agreement and be in a form reasonably acceptable to Lessee and Lessor); (iii) be for a term equal to the then-remaining term of this Agreement; (iv) contain a grant of access, transmission, communications, utility and other easements for the benefit of the bifurcated leasehold estates; (v) require payment of rent to Lessor in the amount shown in Article III of this Agreement for any acreage of the Premises subject to such Bifurcated Agreement; (vi) to the extent permitted by law, enjoy the same priority as this Agreement over any lien, encumbrance or other interest against the Premises; and (vii) specify that Lessor acknowledges and agrees that any new Bifurcated Agreements shall be separate stand-alone obligations of the lessee or grantee named in such Bifurcated Agreement, and that in the event of a uncured event of default by the named lessee or grantee under one Bifurcated Agreement, such default shall not affect or cause a termination of any other Bifurcated Agreement.

Section 10.3 No Third-Party Beneficiaries

Except for the rights of Lenders set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

Section 10.4 Entire Agreement

It is mutually understood and agreed that this Agreement constitutes the entire agreement between Lessor and Lessee and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. This Agreement may not be amended except in a writing executed by both Parties.

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Section 10.5 Legal Matters

(a) This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth where the Premises are located. Notwithstanding anything to the contrary in this Agreement, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Agreement.

(b) EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT. EACH OF THE PARTIES WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

Section 10.6 Cooperation

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective Parties. Neither Lessor nor Lessee shall make any oral or written statement about the other Party which is intended or reasonably likely to disparage the other Party, degrade the other Party's reputation in the community, or interfere with its business relationships or reputation.

Section 10.7 Waiver

Neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the Party against whom the waiver would operate. Any waiver at any time by either Party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

Section 10.8 Relationship of Parties

The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Lessor and Lessee or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Lessor and Lessee shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other Party.

Section 10.9 Confidentiality

Lessor shall maintain in the strictest confidence, for the benefit of Lessee and any assignee or transferee of Lessee, all information pertaining to the financial terms of or payments under this

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Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Facilities, and the like, whether disclosed by Lessee, any assignee or transferee, or discovered by Lessor, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or its employees or agents; or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee, any assignee or transferee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Lessor regarding this Agreement; any prospective purchaser of the Premises who has made a written offer to purchase or otherwise acquire the Premises that Lessor desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Lessee and any assignee or transferee of Lessee. Lessor shall obtain Lessee's written consent before issuing a press release or having any contact with or responding to any requests from the news media regarding the Project or the Agreement. The provisions of this Section 10.9 shall survive the termination or expiration of this Agreement.

Section 10.10 Counterparts

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

Section 10.11 Memorandum of Lease

Lessor and Lessee shall execute, and Lessee may then record, a memorandum of this Agreement in a form substantially similar to the attached Exhibit C ("**Memorandum**"). During the Option Period, Extended Term and any Renewal Term, Lessee shall have the right, from time to time, to file an amendment to the Memorandum revising the legal description of the Premises with the legal description provided by Lessee's surveyor, as may be modified from time to time by subsequent surveyors, *provided, however*, such amended legal description of the Premises does not materially exceed the boundaries of the Premises as originally described in Exhibit A. Lessor hereby grants Lessee the right to execute such amendment to the Memorandum without obtaining the prior consent of Lessor and without requiring Lessor's signature, if allowable under commonwealth law and county recording requirements. Lessee shall provide a copy of each such amendment to Lessor within sixty (60) days after the amendment has been filed in the public records of the county where the Premises is located and the legal description provided shall replace the legal description on the attached Exhibit A. Lessor hereby consents to the recordation of the interest of an assignee in the Premises. Upon the termination of the Agreement, at the request of Lessor, Lessee agrees to provide a recordable acknowledgement of such termination to Lessor.

Section 10.12 Multiple Owners

The parties comprising Lessor shall be solely responsible for distributing their respective shares of such payments between themselves. The parties comprising Lessor shall resolve any dispute

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they might have between themselves under this Agreement or any other agreement regarding any amount paid or payable to Lessor under this Agreement or the performance of any obligation owed to Lessor under this Agreement and shall not join Lessee in any such dispute or interfere with, delay, limit or otherwise adversely affect any of the rights or remedies of Lessee under this Agreement in any way; provided, this will not limit the rights of Lessor under this Agreement to enforce the obligations of Lessee under this Agreement and so long as all parties comprising Lessor agree on pursuing such right or remedy and so notify Lessee in writing. If Lessor owns less than one hundred percent (100%) of the surface estate of the Premises, Lessor's rent payments as set forth in Article III of this Agreement will be adjusted and paid pro-rata in accordance with Lessor's actual ownership of the surface estate of the Premises. Lessor shall cooperate with Lessee to obtain an agreement with the holders of any additional interest in the surface estate.

Section 10.13 Severability

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable law. If any provision of this Agreement is held to be invalid, void (or voidable) or unenforceable under applicable law, such provision shall be ineffective only to the extent held to be invalid, void (or voidable) or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

Section 10.14

The terms of the special provisions addendum attached hereto as Exhibit D ("**Addendum**") are incorporated into this Agreement. In the event of any conflict between the Agreement and the Addendum, the terms of the Addendum shall prevail.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, the undersigned have caused this Option and Land Lease to be executed as of the Effective Date.

LESSOR:

M. L. Johnson
Name: Matthew Lyle Johnson

Dated: *May 11 2023*

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IN WITNESS WHEREOF, the undersigned have caused this Option and Land Lease to be executed as of the Effective Date.

LESSEE:

FRON bn, LLC
a Delaware limited liability company

By: 
Name: Martin Hermann
Title: Manager

Dated: 06/09/2023

By: _____
Name: Ron Kiecana
Title: Chief Development Officer

Dated: _____

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EXHIBIT A
DESCRIPTION OF PREMISES

Parcel 1:

Tax ID No: 12-115

A TRACT OF LAND situated in Washington County, Kentucky, on the South or West side of Cartwright's Creek and bounded and described as follows: BEGINNING at a sycamore tree on a branch on the west side of Cartwright's Creek, corner to John E. Smith; thence N 1 1/2 W 32.3 poles to a sugar tree corner to same, thence N 24 W 6.6 poles to a stone corner to same, thence N 72 E 11 poles to a corner to same in H. Smith line, thence N 40 1/4 W 36 poles to a Burr Oak corner to J. E. Smith, thence N 71 W 34.4 poles to a sycamore on the North side of creek, thence N 86 1/2 W 27 poles to a large sycamore on North bank of Creek, thence N 63 1/2 W 31.4 poles to an oak stump on the South Bank of Cartwright's Creek at the turnpike Road and corner to J. E. Smith, thence with the center of the road S 53 W 13 poles to corner to the land sold by J. Rich Smith to Al Smith, thence leaving the road and with Al Smith line S 54 E 19.3 poles, S 56 1/2 E 16 poles, S 31 E 24 poles to corner to same, thence with same S 65 W 62 poles to corner to same and J. S. Osburne, thence with line of same S 2 W 81.2 poles to corner to same in Barton Mattingly line, thence with line of said Mattingly N 86 1/2 E 140 poles to an oak stump on branch, corner to J. E. Smith; thence with his line N 53 E 27.6 poles to the Beginning, Containing 85 Acres, more or less.

EXCEPTING

Tract One (5.59) acres of the Minor Plat for Matt Johnson, as shown on plat of same of record in Plat Cabinet C, Slide 291, in the Office of the Washington County Court Clerk.

Parcel contains 79.41 acres, more or less

Parcel 2:

Tax ID No: 13-006

A certain tract of land in Washington County, Kentucky, on Cartwrights Creek and bounded and described as follows: Beginning at (1) a corner post at the N. W. corner of the tract, a corner to J. Rich Smith and Osbourn; thence with Osbourn's line S 3 W 86.8 poles to (2) a 24 inch black oak corner to Osbourn in Moraja's line; thence N 70 E 227 poles to (3) a stone in Cambron's line; thence with Cambron's line N 27 3/4 W 20 poles to (4) a stone; thence N 76 W 38 poles to (5) the center of Cartwrights Creek; thence down the Creek in the middle thereof N 4 W 43 1/2 poles to (6) a mark in the bed of the Creek corner to Cambron and Smith; thence with Smith's line N 5 W 4 poles to (7) a chisel mark in the middle of the Creek bed; thence N 78 W 10 1/2 poles to (8) a sycamore, corner to Smith; thence S 54 W 28 1/2 poles to (9) an ash stump; thence S 69 1/4 W 135.4 poles to the Beginning, Containing 95.77 acres.

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EXCEPTING

From the junction of Booker CR and Jackson Branch CR, proceed southwardly with Jackson Branch Lane CR 0.50 miles to rebar (set) on the west side of Jackson Branch Lane CR (15 feet from centerline) and 15 feet south of existing farm gravel road centerline, as witnessed by top of water hydrant at N58-22-45W 387.34 feet and P.O.B. (All reference to rebar (set) are 1/2" X 18" rebar (set), I.D. capped Spaulding PLS #3066). Thence with west CR R.O.W., S68-31-39E 39.333 feet to rebar (set); S49-10-22E 99.96 feet to rebar (set); S 04-11-57E 100.58 feet to rebar (set); S07-15-12W 100.39 feet; S02-04-42W 131.94 feet to rebar (set) and corner to remaining Smith Farm. Thence with new lines to remaining Smith, S89-07-22W 197.01 feet to corner rebar (set); N12-12-24W 295.35 feet to corner rebar (set) 15 feet from centerline of farm road and south side of 30 feet in width R.O.W. easement. Thence with south side of R.O.W. easement, N55-35-28E 100.53 feet, and N47-07-22E 101.46 feet to the P.O.B. Containing 2.006 acres.

EXCEPTING

A SMALL TRACT OR PARCEL OF LAND, lying and being on the waters of Cartwrights Creek and bounded and described as follows: BEGINNING at a stone corner to Tract No. 1; thence S 50 yards, more or less; thence East across Creek to the land of Herman Warren; thence North to the lands of the Richard Cambron heirs; thence back to the Beginning, Containing One (1) Acre, more or less and being sold by the boundary irrespective of the number of acres contained therein.

Parcel contains 93.76 acres, more or less

The Premises contains 173.17 acres, more or less

MJ 5/11/23

EXHIBIT B

Mineral Rights

MS 5/11/23

EXHIBIT C

Form of Memorandum

(Attached)

MJ 5/11/23

EXHIBIT D

Special Provisions Addendum

- A. This is an addendum ("**Addendum**") to that certain Option and Land Lease ("**Agreement**") between Matthew Lyle Johnson and FRON bn, L.L.C.
- B. Any capitalized terms set forth in this Addendum and not otherwise defined herein shall have the meaning ascribed to them in the Agreement.
- C. In the event of any inconsistency between the terms of the Agreement and the terms of this Addendum, the terms of this Addendum shall prevail.

[Add negotiated terms/deviations from Agreement form]

MLJ 5/11/23

Agreed and acknowledged:

LESSOR:


 May 11 2023

Name: Matthew Lyle Johnson

LESSEE:

FRON bn, LLC

a Delaware limited liability company

By: 

Name: Martin Hermann

Title: Manager

By: _____

Name: Ron Kiecana

Title: Chief Development Officer